Supreme Court, U.S.
FILED
DEC 11 1997
CLERK

No. 97-42

IN THE

Supreme Court Of The United States

October Term, 1997

EASTERN ENTERPRISES,
Petitioner,
v.
KENNETH S. APFEL, COMM'R OF SOCIAL SECURITY, *et. al.*,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JOINT APPENDIX
VOLUME I, PAGES 1a TO 230a

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CERTIORARI GRANTED OCTOBER 20, 1997

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Opinion, *Eastern Enterprises* v. *Shirley S. Chater, et al.*, 110 F.3d 150 (CA1 1997) A-1

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* This item is found in the Appendix included in the Brief for Respondents the UMWA Combined Benefit Fund and its Trustees in Opposition.

RELEVANT DOCKET ENTRIES
United States District Court for the District of Massachusetts
(No.93-CV-12372)

11/1/93	1	Complaint filed (bdb) [Entry date 11/02/93]
11/1/93	65	Motion by Eastern Enterprises for temporary restraining order , filed. (jdj) [Entry date 08/07/95]
11/5/93	2	Response by United Mine Workers in opposition to motion for TRO. (jdj) [Entry date 11/08/93]
11/26/93	6	STIPULATION by Eastern Enterprises, Donna E. Shalala, Joseph P. Connors Sr., Marty D. Hudson, Thomas O.S. Rand, Elliott A. Segal, Carlton R. Sickles, Gail R. Wilensky, John Doe, United Mine Workers.cc/cl (see stipulation for detail) (jdj)
12/15/93	7	Answer to Complaint by United Mine Workers (jdj)
12/17/93	8	STIPULATION by Eastern Enterprises, Donna E. Shalala, Joseph P. Connors Sr., Marty D. Hudson, Thomas O.S. Rand, Elliott A. Segal, Carlton R. Sickles, Gail R. Wilensky, John Doe, United Mine Workers regarding amended complaint. (jdj) [Entry date 12/29/93]

12/27/93	9	Answer by Eastern Enterprises to counterclaim of the Combined Benefit Fund and its trustees. FILED c.s. (jmr) [Entry date 12/29/93]
1/10/94	10	Third-party complaint by Eastern Enterprises against Peabody Holding CO., Eastern Associated, Coal Properties Corp (jdj)
2/14/94	13	Motion by Peabody Holding CO., Eastern Associated, Coal Properties Corp to dismiss third party complaint (jdj)
2/14/94	14	Memorandum by Peabody Holding CO., Eastern Associated, Coal Properties Corp in support of [13-1] motion to dismiss third party complaint (jdj)
2/14/94	15	Affidavit of T.S. Hilton Re: [13-1] motion to dismiss third party complaint (jdj)
3/8/94	17	Status report filed by Eastern Enterprises, Donna E. Shalala (jdj)
3/22/94	20	Response by Eastern Enterprises in opposition to [13-1] motion to dismiss third party complaint (jdj)
12/19/94	25	Joint Status report by Eastern Enterprises, Donna E. Shalala, Joseph P. Connors Sr., Marty D. Hudson, Thomas O.S. Rand, Elliott A. Segal, Carlton R. Sickles, Gail R. Wilensky, Doe, United Mine Workers , filed. (jdj)

12/19/94	26	Status report by Eastern Enterprises, Donna E. Shalala, Joseph P. Connors Sr., Marty D. Hudson, Thomas O.S. Rand, Elliott A. Segal, Carlton R. Sickles, Gail R. Wilensky, John Doe, United Mine Workers , filed. (jdj) [Entry date 12/20/94]
1/18/95	28	Judge Mark L. Wolf . Clerk's Notes: re: status conference held, parties to submit proposed schedule by 1/25/95, amended complaint due 2/15/95, brief on APA issues due 3/15/95 defts response due 4/15/95,plaintiffs replys due 4/28/95 set status conference for 10:00 5/19/95 before Judge Mark L. Wolf Court Reporter: (jdj) [Entry date 01/25/95]
1/31/95	31	Judge Mark L. Wolf . Scheduling Order entered setting plaintiffs amending of complaint on 2/15/95 Deadline for filing of plaintiffs S/J motions 3/15/95, responses due 4/28/95 Status conference set for 10:00 5/19/95 . cc/cl (jdj)
2/15/95	32	Amended complaint by Eastern Enterprises filed. (Answer due 2/25/95 for Coal Properties Corp, for Eastern Associated, for Peabody Holding CO., for United Mine Workers, for John Doe, for Gail R. Wilensky, for Carlton R. Sickles, for Elliott A. Segal, for Thomas O.S. Rand, for Marty D. Hudson, for Joseph P. Connors Sr., for Donna E. Shalala) . Amended complaint amends [1-1] complaint ; adding . (jdj) [Entry date 02/21/95]

3/3/95	34	Answer by Donna E. Shalala to amended complaint, filed. (jdj)
3/7/95	35	Answer by United Mine Workers to amended complaint, filed. (jdj)
3/16/95	36	Motion by Eastern Enterprises for summary judgment, filed. (jdj)
3/16/95	37	Memorandum by Eastern Enterprises in support of [36-1] motion for summary judgment , filed. (jdj)
3/16/95	38	Statement of Facts by Eastern Enterprises re: [36-1] motion for summary judgment , filed. (jdj)
3/16/95	39	Eastern Enterprises exhibits in support of it statement of material facts (volume 1) (jdj)
3/16/95	40	Eastern Enterprises exhibits in support of its statement of material facts. (volume 2) (jdj)
3/16/95	41	Eastern Enterprises exhibits in support of its statement of material facts. (volume 3) (jdj)
4/18/95	42	Memorandum by Donna E. Shalala in opposition to [36-1] motion for summary judgment, filed. (jdj)
4/18/95	43	Response by United Mine Workers to plaintiffs statement of facts , filed. (jdj)
4/18/95	44	Affidavit of Edward Gleason, filed. (jdj)

4/18/95	45	Response by Peabody Holding CO., Eastern Associated, Coal Properties Corp in opposition to [36-1] motion for summary judgment, filed. (jdj)
4/18/95	46	Affidavit Kenneth Sweder, re: [45-1] opposition response, filed. (jdj)
4/18/95	47	Statement of Facts by Eastern Associated re: [36-1] motion for summary judgment, filed. (jdj)
4/18/95	48	Response by Donna E. Shalala et al in opposition to [36-1] motion for summary judgment, filed. (jdj)
4/18/95	49	Response by Donna E. Shalala et al to Eastern Enterprises statement of material facts, filed. (jdj)
4/18/95	50	Declaration of Donna E. Shalala et al, re: [48-1] opposition response, filed. (jdj)
5/1/95	51	Reply by Eastern Enterprises to response to [36-1] motion for summary judgment, filed. (jdj)
7/10/95	56	Motion by Eastern Enterprises to supplement the record in support of S/J on statutory interpretation claims, filed. (jdj)

7/10/95	57	Memorandum by Eastern Enterprises in support of [56-1] motion to supplement the record in support of S/J on statutory interpretation claims, filed. (jdj)
7/10/95	58	Affidavit of William Elias, re: [56-1] motion to supplement the record in support of S/J on statutory interpretation claims, filed. (jdj)
7/21/95	60	Motion of Shirley Chater to extend time to 7/28/95 to supplement record, filed. (jdj)
7/28/95	61	Motion by Peabody Holding CO., Eastern Associated, Coal Properties Corp for leave to file supplemental brief, filed. (jdj)
7/28/95	62	Supplemental Brief by Peabody Holding CO., Eastern Associated, Coal Properties Corp in opposition to [36-1] motion for summary judgment, filed. (jdj)
7/31/95	63	Response by Donna E. Shalala to [56-1] motion to supplement the record in support of S/J on statutory interpretation claims , filed. (jdj)
7/31/95	64	Affidavit of Marilyn O'Connell , re: [63-1] motion response, filed. (jdj)

8/2/95	–	Judge Mark L. Wolf . Endorsed Order entered granting [60-1] motion to extend time to 7/28/95 to supplement record .cc/cl (jdj)
8/7/95	68	Judge Mark L. Wolf . Notice of Hearing/conference: Motion hearing set for 2:00 9/28/95 for [36-1] motion for summary judgment . cc/cl (jdj) [Entry date 08/08/95]
8/8/95	67	Reply by Eastern Enterprises to response to [56-1] motion to supplement the record in support of S/J on statutory interpretation claims , filed. (jdj)
8/9/95	69	Response by Eastern Enterprises to [61-1] motion for leave to file supplemental brief, filed. (jdj)
9/8/95	71	Motion by Eastern Enterprises for leave to file supplemental memorandum w/regard to new coal act regulations, filed. (jdj)
9/8/95	72	Memorandum by Eastern Enterprises in further support of, summary judgment on the statutory interpretation claims in light of new SSA regulations filed. (jdj)
9/21/95	76	Motion by SSA to extend time to 9/22/95 to respond to memo by Eastern, filed. (jam) [Entry date 09/22/95]

9/22/95	75	Supplemental Memorandum by Peabody Holding CO., Eastern Associated, Coal Properties Corp in opposition to [72-1] support memorandum , filed. (jam)
9/25/95	77	Memorandum in opposition by Shirley S. Chater to [71-1] motion for leave to file supplemental memorandum w/regard to new coal act regulations, filed. (jam) [Entry date 09/26/95]
10/10/95	79	Reply by Eastern Enterprises to response to [71-1] motion for leave to file supplemental memorandum w/regard to new coal act regulations, filed. c/s. (cjn) [Entry date 10/13/95]
10/10/95	80	Motion by Eastern Enterprises for leave to file response to Federal Defendants Opposition to motion for leave to file supplemental Memorandum with Regard to New Coal Act Instructions, filed. c/s. (cjn) [Entry date 10/13/95]
10/26/95	81	Judge Mark L. Wolf . Notice/order entered cancelling deadline. Deadline terminated: hearing. It has been rescheduled for 11/30/95 at 2:30. cc/cl. (cjn)
11/16/95	82	Notice of cancellation, Hearing scheduled for November 30, 1995 has been cancelled. It has been rescheduled for January 9, 1996 at 2:30, filed. c/s. (cjn) [Entry date 11/20/95]

12/6/95	83	Judge Mark L. Wolf . Notice/order entered cancelling deadline. Deadline terminated: rescheduled for 1/25/96 at 2:30. cc/cl. (cjn)
12/15/95	84	Letter by John T. Montgomery dated: 12/15/95 to: Ms. Lovett re: schedule filed. c/s. (cjn) [Entry date 12/19/95]
2/1/96	–	Scheduling conference held . (cjn) [Entry date 02/09/96]
2/1/96	90	Judge Mark L. Wolf . Clerk's Notes: re: conference held denying [36-1] motion for summary judgment, denying [13-1] motion to dismiss third party complaint. Parties stipulated protective Order is allowed. John R. Mooney Admitted pro hac vice Court Reporter: Jim McLaughlin (cjn) [Entry date 02/09/96]
2/9/96	93	Motion by Eastern Enterprises for summary judgment on constitutional claims, filed. c/s. (cjn) [Entry date 02/13/96]
2/13/96	94	Judge Mark L. Wolf . Adopted Scheduling Order entered, reset motion filing deadline summary judgment for 2/9/96, Response to motion reset to 3/1/96 for [93-1] motion for summary judgment and or serve cross motion for summary judgment on The Constitutional claims. The Federal Defendant and the United Mine Workers combined Benefit Fund have until 3/1/96 to serve proposed forms of order with respect to resolution of the

		pending motions for summary judgment. Eastern may serve on or before 3/4/96 Opposition to any Cross Motion for summary judgment... Any other party serve by 32/7/96 a reply to Opposition filed by Eastern as above. Any party shall be permitted, but not required, to submit any further memorandum of law in support of or opposition to any pending motion for summary judgment. Eastern and 3dpty Defendants will serve a proposed discovery schedule by 3/4/96. cc/cl. (cjn) [Entry date 02/16/96]
3/1/96	95	Memorandum by Peabody Holding CO. in opposition to [93-1] motion for summary judgment on constitutional claims, filed. c/s. (cjn) [Entry date 03/05/96]
3/4/96	96	Cross motion by Donna E. Shalala, Joseph P. Connors Sr., Marty D. Hudson, Thomas O.S. Rand, Elliott A. Segal, Carlton R. Sickles, Gail R. Wilensky, John Doe, United Mine Workers for summary judgment on constitutional issues, filed. c/s. (cjn) [Entry date 03/05/96]
3/4/96	97	Memorandum by Donna E. Shalala, Joseph P. Connors Sr., Marty D. Hudson, Thomas O.S. Rand, Elliott A. Segal, Carlton R. Sickles, Gail R. Wilensky, John Doe, United Mine Workers in support of [96-1] cross motion for summary judgment on constitutional issues, filed. c/s. (cjn) [Entry date 03/05/96]

3/4/96	98	Affidavit Russel Crosby, re: [97-1] support memorandum, [96-1] cross motion for summary judgment on constitutional issues, filed. c/s. (cjn) [Entry date 03/05/96]
3/4/96	100	Memorandum by Eastern Enterprises in opposition to [96-1] cross motion for summary judgment on constitutional issues, filed. Proposed Order attached. c/s. (cjn) [Entry date 03/06/96]
3/5/96	101	Memorandum by Shirley S. Chater in opposition to [96-1] cross motion for summary judgment on constitutional issues, [93-1] motion for summary judgment on constitutional claims, filed. c/s. (cjn) [Entry date 03/13/96]
3/18/96	104	Answer by Peabody Holding CO., Eastern Associated, Coal Properties Corp to [10-1] third-party complaint, filed. c/s. (cjn) [Entry date 03/22/96]
3/30/96	106	Judge Mark L. Wolf . Memorandum and Order entered. denying [93-1] motion for summary judgment on constitutional claims denying [13-1] motion to dismiss third party complaint. cc/cl. (cjn) [Entry date 04/01/96]

7/24/96	111	Judge Mark L. Wolf . Judgment entered for Donna E. Shalala, Joseph P. Connors Sr., Marty D. Hudson, Thomas O.S. Rand, Elliott A. Segal, Carlton R. Sickles, Gail R. Wilensky, John Doe, United Mine Workers against Eastern Enterprises . cc/clc. (cjn) [Entry date 07/25/96]
8/5/96	115	Notice of appeal by Eastern Enterprises filed. Appeal record due on 9/4/96 (mmh) [Entry date 08/08/96]
5/30/97	116	Mandate of US Court of Appeals re: affirming . (mmh)

RELEVANT DOCKET ENTRIES
United States Court of Appeals for the First Circuit
(No. 96-1947)

9/5/96	CIVIL case docketed. [240462-1] Notice filed by Ellen Solomon-Gonzales for Appellant Eastern Enterprises, John T. Montgomery for Appellant Eastern Enterprises. (bety)
9/5/96	RECORD ON APPEAL filed: 1 volume(s). Appellant's Brief Due 10/10/96. (bety)
9/13/96	MOTION filed for Appellant Eastern Enterprises requesting caption change entered on docket. (bety)
9/13/96	ORDER: by Judge Norman H. Stahl. Upon consideration of motion of Appellant, it is ordered that the above-captioned appeal be amended to read as stated in said order. (bety)

10/18/96	APPELLANT'S BRIEF and 4 volumes of APPENDIX filed on behalf of Eastern Enterprises. Pages: 50, Copies: 10, delivered by mail, filed. Certificate of service date 10/17/96. (bevy)
10/18/96	MOTION filed for Appellant Eastern Enterprises requesting to file substituted brief. (bety)
10/22/96	ORDER: by Judge Michael Boudin granting motion to file substituted brief. (bety)
10/22/96	CORRECTED BRIEF filed on behalf of Appellant Eastern Enterprises. Pages: 50, Copies: 10, delivered by mail, filed. Certificate of service date . (bety)
12/9/96	BRIEF filed by Kenneth A. Sweder for Appellees Peabody Holding Company, Inc Et Al. Copies: 10. Certificate of service date 12/9/96. (bevy)
12/12/96	BRIEF filed by Sushma Soni for Appellees Shirley S. Chater. Copies: 10. Certificate of service date 12/9/96. (bevy)
12/12/96	BRIEF filed by Appellees The UMWA Combined Benefit Fund and Its Trustees. Copies: 10. Certificate of service date 12/9/96. (bevy)
12/31/96	APPELLANT'S REPLY BRIEF on behalf of Eastern Enterprises. Pages: 24. Copies: 10. Delivered by hand. Certificate of service date 12/30/96. (bety)

4/7/97	JUDGMENT: Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Judge Bruce M. Selya, Authoring Judge; Judge Conrad K. Cyr; Judge Norman H. Stahl. published pages: 26 (bety)
5/30/97	MANDATE ISSUED. Taxation of costs filed. (bety)
7/9/97	U.S. SUPREME COURT NOTICE filed regarding petition for writ of certiorari. Filed in the Supreme Court on 7/3/97. Supreme Court case number: 97-42. (bety)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. No. 93-12372-MLW

Eastern Enterprises,

Plaintiff,

V.

Donna E. Shalala, Et Al.,

Defendants.

THIRD PARTY COMPLAINT

INTRODUCTION

Eastern Enterprises ("Eastern") seeks a declaratory judgment that Peabody Holding Co., Inc. ("Peabody"), Eastern Associated Coal Corp. ("EACC") and Coal Properties Corp. ("CPC") are obligated, by contract, by common-law and by basic notions of fairness, to pay any liability which may be imposed on Eastern by the Coal Industry Retiree Health Benefit Act, 26 U.S.C. § 9701 et seq., ("the Coal Act").

JURISDICTION AND VENUE

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1332 and 2201. It also has jurisdiction under the doctrine of ancillary jurisdiction.

2. Venue of this action lies in the District of Massachusetts pursuant to 28 U.S.C. §§ 1391 (a), (b) and (c).

PARTIES

3. Eastern is a Massachusetts business trust with its principal place of business in Weston, Massachusetts.

4. Peabody is a New York Corporation with its principal place of business in St. Louis, Missouri.

5. CPC is a Delaware Corporation. Upon information and belief, it primarily functions as a holding company. CPC is owned, directly or indirectly, by Peabody.

6. EACC is a Delaware Corporation with its principal place of business in Weston, West Virginia. EACC is owned, directly or indirectly, by Peabody.

FACTS

Eastern Transfers Its Coal Operations to CPC

7. As of 1950, Eastern was engaged in coal mining operations in West Virginia, Pennsylvania and Kentucky. Certain employees at its coal mining operations were represented by the United Mine Workers of America ("UMWA").

8. In 1950, through its membership in the Bituminous Coal Operators Association ("BCOA"), Eastern signed the 1950 National Bituminous Coal Wage Agreement ("1950 NBCWA"), the first in a series of agreements to provide funds for certain retirement and other benefits to be provided to miners and others. Through its membership in the BCOA, Eastern was a signatory to various amendments to the 1950 NBCWA, including the 1951, 1952, 1955, 1956, 1958 and 1964 amendments.

9. In 1963, Eastern began transferring its coal mining operations, including its liabilities, to an independent, operating subsidiary named Eastern Associated Coal Corp. ("EACC"). Subsequently, another subsidiary was created, Coal Properties Corp. ("CPC"), to which Eastern transferred EACC's stock.

10. Eastern completed the transfer of its coal-related assets and liabilities to EACC by January 1, 1966, and as of that date, EACC had assumed all present and future liabilities of Eastern arising out of or relating to Eastern's coal mining and marketing operations (with the exception of several leases for which Eastern remained responsible along with EACC). From that date forward, EACC actively fulfilled all coal-related liabilities for which Eastern would have been liable absent the transfer of liabilities to EACC.

Peabody, EACC and the Other BCOA Members Promise Miners New Benefits

11. During the years after 1966, the UMWA and the mine operators who were members of the BCOA negotiated new National Bituminous Coal Wage Agreements ("NBCWAs"). Partly in response to the enactment of ERISA in 1974, the BCOA and the UMWA created a new set of Pension Trusts and Health Benefit Plans. The 1974 NBCWA created the UMWA 1950 Pension Trust ("1950 Pension Trust") and transferred to it the assets of the 1950 W&R Fund. The 1974 NBCWA also created three new plans: the 1974 Pension Trust and two Health Benefit Plans; the UMWA 1950 Benefit Plan and Trust ("1950 Health Benefit Plan"); and the UMWA 1974 Benefit Plan and Trust ("1974 Health Benefit Plan"). The Health Benefit Plans provided health and other benefits to retired coal miners (the 1950 Health Benefit Plan for miners who retired before January 1, 1976 and the 1974 Health Benefit Plan for miners who retired after January 1, 1976).

12. The 1974 NBCWA changed the manner in which signatory employers made contributions. All of the assets of the 1950 W&R Fund – including all of the contributions of Eastern – were transferred to the 1950 Pension Fund. The 1974 Pension Fund, and the Health Benefit Plans, were established without reserves, but were financed with contributions from signatory employers commencing on the effective date of the 1974 NBCWA.

13. The 1974 NBCWA also changed the class of beneficiaries entitled to benefits by greatly expanding it. Prior to the 1974 NBCWA, only "Widows of Men Killed in Mines" were entitled to "[c]ontinuation of hospital and medical coverage." 1971 NBCWA. The 1974 NBCWA provided, by contrast, that "[a]ny pensioned miner covered in this Plan will retain his Health Services card until death, and upon his death his widow will retain a Health Services card until her death or remarriage." 1974 NBCWA.

14. The UMWA and the BCOA negotiated another new NBCWA in 1978 ("1978 NBCWA"). The 1978 NBCWA modified the Health Benefit Plans created in 1974. The Agreement required that health benefits for miners who retired after January 1, 1976 be provided by individual plans of signatory operators (rather than the 1974 Health Benefit Plan), and that the 1974 Health Benefit Plan be used exclusively to provide health benefits to miners who retired after January 1, 1976 and whose operators were "no longer in business." 1978 NBCWA.

15. In negotiations for the 1978 NBCWA, the UMWA and the BCOA agreed to a "guarantee" clause which provided:

> Notwithstanding any other provisions in this Agreement the Employers hereby agree to fully guarantee the pension and health benefits provided by the 1950 Pension Fund, the 1950 Benefit Fund, the 1974 Pension Fund, the 1974 Benefit Fund and all other benefit plans described in Section (c) of this Article XX during the term of this Agreement.

16. The "guarantee" clause obligates signatory operators, for the first time, to make sufficient contributions to assure payment of health and other benefits provided by the 1950 Health Benefit Plan and the 1974 Health Benefit Plan. Prior to 1978, no signatory coal operator had any obligation to make up any deficits, and no right to demand any particular benefits for its miners in the benefit programs of the 1950 and 1974 Health

Benefit Plans, or their predecessor, the 1950 W&R Fund. Prior to 1978, signatory coal operators agreed to contribute at a set rate based on tons of coal mined, but they did not guarantee that those contributions would be sufficient to assure payment of any particular level or particular kind of health benefits to beneficiaries.

17. As a result of negotiations leading to the 1978 NBCWA, the Plan documents for the 1950 and 1974 Health Benefit Plans, which were incorporated by reference into the 1978 NBCWA, included, for the first time, what is known as the "Evergreen Clause." The "Evergreen Clause" reads:

> Any Employer who employed any Participant eligible for coverage under, or who received or receives benefits under, the 1950 [1974] Benefit Plan and Trust, or any Employer who was or is required to make, or who has made or makes contributions to the 1950 [1974] Benefit Plan and Trust, is obligated and required to comply with the terms and conditions of the 1950 [1974] Benefit Trust, as amended from time to time, including, but not limited to, making the contributions required under the National Bituminous Coal Wage Agreement of 1978, as amended from time to time, and any successor agreements thereto.

1950 Health Benefit Plan (February 1988). The "Evergreen Clause" has been interpreted to mean that the signatories to the 1978 NBCWA obligated themselves to continue making contributions to the 1950 and 1974 Health Benefit Plans notwithstanding their subsequent withdrawal from the BCOA or the expiration of other contractual obligations to the UMWA.

18. In negotiations for the 1978 NBCWA, the UMWA and the BCOA also agreed to give the BCOA the unilateral authority to increase contribution rates as necessary to fully fund benefits.

19. Successive NBCWAs were negotiated (in 1981, 1984, and 1988) between the UMWA and those operators that were members of the BCOA, in which contribution rates were increased.

20. In negotiations for the National Bituminous Coal Wage Agreement of 1988 ("1988 NBCWA"), the UMWA and the operators which were members of the BCOA agreed that if any signatory employer's contributions to the 1950 or 1974 Health Benefit Plan ceased for any reason, the signatory would be obligated to pay withdrawal liability.

21. Eastern avers, upon information and belief, that the cumulative effect of the various changes negotiated by the UMWA and the BCOA, was to transform the 1950 Fund, to which Eastern had once contributed, from a plan of limited contributor liability, under which the parties agreed that contributors would be obligated to make only such periodic contributions as were fixed by contract and would not be liable for further contributions if benefit costs outstripped accumulated plan funds, to plans which provided for potentially unlimited liability for the future costs of specified benefits. Eastern was never associated with such a plan and never agreed to any such obligations.

22. Eastern avers, upon information and belief, that as a result of the increased levels of benefits promised and paid by the 1950 and 1974 Health Benefit Plans, the change in the funding formula from tonnage-based to hours-based, the decreased revenues caused by increased worker productivity and fewer man hours worked, the expansion of the class of beneficiaries and, most notably, the failure of the BCOA to increase contribution rates for signatory operators, the 1950 Health Benefit Plan experienced its first deficit in 1988, and the 1974 Health Benefit Plan experienced its first deficit in 1990.

23. Upon information and belief, Peabody and EACC were closely associated with such plans and agreed, again and again, through BCOA throughout the years after 1966 to provide

miners with the benefits set forth in the various NBCWAs. Eastern, in contrast, has not been signatory to any collective bargaining agreement with the UMWA since the 1964 Amendment.

Peabody Acquires CPC and Its Liabilities

24. Peabody acquired CPC (and, accordingly, CPC's subsidiary, EACC) in 1987 by acquiring all of the common stock of the company from Eastern. A Peabody subsidiary acquired all of CPC's preferred stock.

25. By structuring the sale as a stock transaction, Peabody knowingly and intentionally assured that CPC and EACC's liabilities (including the liabilities assumed from Eastern) remained with EACC and CPC. Peabody was a sophisticated corporation and was fully capable of weighing the advantages and disadvantages of acquiring CPC's shares rather than attempting simply to acquire its assets.

26. The sale documents, and the parties' interactions, confirmed that the obligations of CPC and EACC, including CPC's obligations to Eastern's, CPC's and EACC's present and former miners and their spouses and dependents, remained with EACC and CPC. These obligations included all obligations relating to the 1950, 1974 and subsequent NBCWAs.

27. The sale documents, and the parties' interactions, also established that Peabody was responsible for the obligations of CPC and EACC, including the obligations of CPC and EACC to Eastern's former miners.

28. The Stock Exchange Agreement, by which Peabody agreed to acquire the common stock of CPC, for example, provided in Section 5(c) that CPC, EACC or Peabody would be responsible for "payments of premiums and benefits, and for the reimbursement of benefit costs, under the plans listed on Schedule 5(c)." The plans listed on Schedule 5(c) included the "Benefit Plan for UMWA Represented Employees of EACC and Subs." Section 5(c) further provided that Peabody would be

responsible for making these payments and reimbursements "in respect to" "[t]he class of individuals" consisting of "(i) all persons who as of the Closing Date [of the Agreement] are employed by EACC, CPC or any other Subsidiary of CPC and (ii) all persons who prior to the Closing Date retired or otherwise ceased to be employed by CPC or any of its Subsidiaries (including EACC), exclusive of any such person who as of the Closing Date is employed by Eastern or by a Subsidiary of Eastern other than CPC and CPC's Subsidiaries."

29. Similarly, Schedule 2(r) attached to the Stock Exchange Agreement identified the employee benefit plans, collective bargaining agreements and similar plans or agreements to which CPC was required to make contributions. Schedule 2(r) identified, among other things, the 1950 UMWA Pension Trust, the 1950 UMWA Benefit Trust, the 1974 UMWA Pension Trust, the 1974 UMWA Benefit Trust and the NBCWA of 1984. Certain of these trusts directly benefited the former employees of Eastern.

The 1992 Coal Act

30. In response to the deteriorating financial condition of the 1950 and 1974 Health Benefit Plans, Congress drafted the Coal Act, which was signed on October 24, 1992, by President Bush as part of the Energy Policy Act of 1992. Eastern avers, upon information and belief, that the Coal Act guarantees continued lifetime health and death benefits to the approximately 114,000 UMWA retirees, surviving spouses, and dependents who were receiving benefits from the 1950 or 1974 Health Benefit Plans as of July 20, 1992.

31. The Coal Act, in effect, creates three classes of current and former coal mining industry employers:

(i) signatories to the 1988 NBCWA or a "me-too" agreement patterned after the 1988 NBCWA ("1988 Agreement Operators");

(ii) employers that did not sign the 1988 NBCWA, but were signatories to any pre-1988 NBCWA between 1950 and 1978 ("Reachback Companies"); and

(iii) employers that were never signatory to an NBCWA ("Non-signatory Employers").

32. Eastern avers, upon information and belief, that prior to the enactment of the Coal Act, the 1988 Agreement Operators were contractually required to satisfy the obligations of the 1950 and 1974 Health Benefit Plans including lifetime health benefits for the beneficiaries. The Coal Act guarantees the very lifetime health benefits that Operators had contracted to provide between 1974 and 1988, but assigns to all Reachback Companies, including those that signed neither the 1974 nor the 1978 Agreement, responsibility for making premium payments to fund those benefits.

33. Over and above the health benefits provided by the Coal Act, the Act purports to make Reachback Companies responsible for making premium payments sufficient to provide death benefits identical to those provided under the 1950 Pension Trust or 1974 Pension Trust as of July 20, 1992.

34. In order to administer and provide health and death benefits to retirees and their dependents to the same extent provided in the 1950 and 1974 Benefit Plans, Section 9702 of the Coal Act created the UMWA Combined Benefit Fund ("Combined Fund"). Further, the Coal Act provided for the merger of the 1950 and 1974 Benefit Plans into the Combined Fund.

35. The Coal Act divides beneficiaries of the Combined Fund, i.e. the former beneficiaries of the 1950 and 1974 Benefit Plans, into two groups: (i) assigned beneficiaries, i.e., those UMWA retirees who once worked for a 1988 Agreement Operator or a Reachback Company, and the spouses or certain dependents of those UMWA retirees; and (ii) unassigned beneficiaries, i.e., those UMWA retirees who worked for a company that no longer exists, but that once signed an

NBCWA at any time between 1950 and July 20, 1992, and the spouses or certain dependents of those retirees.

36. By Notices dated variously September 28, October 7, October 8, October 15, October 18, October 19, and October 22, 1993, Eastern was informed by the SSA that it had been assigned liability under the Coal Act for a total of approximately 2700 retired miners, surviving spouses, and dependents.

37. By Memorandum dated October 22, 1993 from the Trustees of the UMWA Combined Benefit Fund, Eastern was notified that it would be required to pay a monthly premium to the Combined Fund, beginning with the month of October 1993, of $421,109.18 for approximately 1400 retired miners and their dependents (reflecting an apparent adjustment in the number of beneficiaries assigned to Eastern).

38. The Memorandum sent by the Combined Fund states that the premiums payable for the period beginning October 1993 do not include any portion attributable to death benefits or unassigned persons, inasmuch as the costs of such coverage have been satisfied for the moment with funds transferred from the 1950 Pension Trust. Nevertheless, Eastern avers, upon information and belief, that notwithstanding this temporary relief, the Coal Act by its terms will require Eastern to contribute substantial additional premiums for death benefits and benefits for unassigned persons.

39. The Coal Act purports to require the Secretary to assign to Eastern as a Reachback Company both former employees (and spouses or dependents) and a percentage of unassigned beneficiaries. Consequently, if the assignments made by the Secretary are not withdrawn, Eastern could be liable for annual premiums in excess of $3 million to pay for health and death benefits with respect to former employees, their spouses and dependents and unassigned beneficiaries.

40. Eastern avers, upon information and belief, that under the provisions of the Coal Act, Eastern's financial obligations to

the Combined Fund would continue until there are no remaining retirees, surviving spouses, or dependents receiving health and/or death benefits from such Fund, which is anticipated to continue for thirty years or more. This would require Eastern to pay tens of millions of dollars into the Combined Fund.

41. Pursuant to applicable accounting standards, Eastern may well be required to immediately reflect on its financial reports the value of contributions that the Coal Act would require it to pay into the Combined Fund over the lifetime of that Fund. The effect of this would be to substantially reduce the net worth of Eastern and would result in a substantial loss for the fiscal year ending December 31, 1993.

42. Eastern is a Reachback Company which no longer operates bituminous coal mines. Upon information and belief, under the Coal Act, Eastern must pay premiums with respect to benefits for its former employees to whom it had never promised such benefits and also for an indeterminate number of unassigned individuals with whom Eastern has never had an employment relationship.

43. The liability purportedly applied to Eastern is one which was assumed by EACC and CPC. It relates to Eastern's coal operations and was, accordingly, transferred to EACC and CPC in 1966.

44. The liability purportedly applied to Eastern is one which was transferred to CPC and EACC. It was a liability assumed by EACC and CPC and remained with EACC and CPC when Peabody acquired those companies.

45. The Stock Exchange Agreement also provides that the liability purportedly applied to Eastern is one which Peabody, EACC and CPC are required to pay. That liability directly arises from payments of premiums and benefits, and for the reimbursement of benefit costs under the benefit plans for the UMWA covered employees for which EACC or CPC were liable under the benefit plans. As such, the Stock Exchange

Agreement provides, in Section 5(c) and elsewhere, that Peabody, EACC and CPC, not Eastern, shall be liable for such payments.

46. Basic notions of fairness and justice require that Peabody, EACC and CPC, and not Eastern, be responsible for the liability purportedly applied to Eastern by the Coal Act. Said liability arises from promises made, and not kept, by companies such as Peabody and EACC. Those companies committed to providing benefits to UMWA members, but failed to provide the funds necessary to supply those benefits. Eastern never agreed to provide such benefits. In fact, it has fully funded all benefits it committed to provide. It is unfair and unjust to require Eastern to, in effect, pay the debts of companies such as Peabody.

CAUSE OF ACTION

47. Eastern realleges the allegations contained in Paragraphs 1 through 46 of this Third Party Complaint as if fully set forth herein.

48. There exists an actual controversy between Eastern and the defendants regarding their obligation to pay any liability purportedly applied to Eastern by the Coal Act.

49. EACC, CPC and Peabody are obligated by reason of the 1987 Stock Exchange Agreement to pay any liability purportedly applied to Eastern by the Coal Act.

50. EACC, CPC and Peabody are obligated by basic equitable considerations to pay any liability purportedly applied to Eastern by the Coal Act.

51. EACC, CPC and Peabody are obligated by reason of their assumption of Eastern's coal-related liabilities to pay any liability purportedly applied to Eastern by the Coal Act.

PRAYER FOR RELIEF

WHEREFORE, Eastern Enterprises requests that this Court enter a judgment: (a) declaring that Peabody Holding Co., Inc., Eastern Associated Coal Corp. and Coal Properties Corp. are obligated to pay any liability which may be imposed on Eastern by the Coal Industry Retiree Health Benefit Act, 26 U.S.C. §9701 et seq.; and (b) granting Eastern such other and further relief as the Court may deem just and proper, including attorneys' fees and costs.

Respectfully submitted,

EASTERN ENTERPRISES,
by its attorneys,

/s/ Rosa C. Hallowell
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Dated: January 5, 1994

(certificate of service omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

(Caption Omitted)

FIRST AMENDED COMPLAINT
PRELIMINARY STATEMENT

1. This is an action seeking relief, pursuant to 5 U.S.C. § 706, from a determination by the Secretary of Health and Human Services that Eastern Enterprises ("Eastern"), rather than its successor, Eastern Associated Coal Corp. ("EACC"), is obligated to provide lifetime health and death benefits, under the provisions of the Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act"), to certain retired coal miners (and certain other persons) who were employed by Eastern's former Coal Division between 1946 and 1965. Alternatively, Eastern seeks a declaratory judgment that the provisions of the Coal Act cannot be interpreted to require Eastern to provide such benefits. Finally, assuming that Eastern is liable to provide benefits under the Coal Act, Eastern seeks a determination that the Coal Act violates the Due Process and Takings Clauses of the Fifth Amendment of the U.S. Constitution.

2. The Coal Act, as interpreted by the Secretary, would (i) transfer obligations to Eastern, at a cost of $100 million, that arise under collective bargaining agreements that were executed long after Eastern left the coal industry in 1965, and (ii) relieve EACC, Eastern's successor, which assumed all of Eastern's liabilities and which executed the agreements providing for the benefits secured by the Coal Act, from any statutory responsibility to meet those obligations.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 5 U.S.C. § 551 et seq., and 28 U.S.C. § 2201.

4. Venue of this action lies in the District of Massachusetts pursuant to 28 U.S.C. § 1391(e).

PARTIES

5. Plaintiff Eastern is a Massachusetts business trust with a principal place of business in Weston, Massachusetts.

6. Defendant Donna E. Shalala the ("Secretary") is the Secretary of Health and Human Services. She performs her official duties in Washington, D.C. Under Sections 9704 and 9706 of the Coal Act, the Secretary is responsible for assigning retiree beneficiaries to operators who at one time were signatories to a National Bituminous Coal Wage Agreement ("NBCWA") and assessing premiums for retiree health benefits imposed by the Coal Act regardless of whether the retirees ever worked for the operator.

7. Defendants Joseph P. Connors, Sr., Marty D. Hudson, Thomas O.S. Rand, Elliott A. Segal, Carlton R. Sickles, Gail R. Wilensky and John Doe are the trustees of the United Mine Workers of America Combined Benefit Fund who are responsible under § 9704 and § 9421 of the Coal Act for the collection of premiums from contributors to the Combined Fund. The offices of the Trustees of the Combined Fund are located at 4455 Connecticut Avenue, N.W., Washington, D.C. 20008.

8. Defendant United Mine Workers of America Combined Benefit Fund (the "Combined Fund") is established under § 9702 of the Coal Act as a multiemployer employee welfare benefit plan pursuant to § 302(c)(5) of the Labor Management Relations Act of 1947, and §§ 3(1) and 3(37) of the Employee Income Retirement Security Act of 1974, 29 U.S. C. §§ 1001 et seq. ("ERISA"). The Combined Fund is the result of a February 1, 1993 merger of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan and was established to disburse health and death benefits to its beneficiaries under the Coal Act. The Combined Fund is located at 4455 Connecticut Avenue, N.W., Washington, D.C. 20008. The Combined Fund does business

in the Commonwealth of Massachusetts by sending notices of payments due and by collecting premiums in the Commonwealth.

FACTS

History of the United Mine Workers of America Funds

9. The United Mine Workers of America ("UMWA") is a labor organization that represents certain bituminous coal miners for purposes of collective bargaining.

10. The UMWA and coal mine operators, individually or through various multiemployer bargaining associations, negotiated the 1950 National Bituminous Coal Wage Agreement ("1950 NBCWA"), signed and effective as of March 4, 1950. The 1950 NBCWA created the United Mine Workers of America Welfare and Retirement Fund of 1950 ("1950 W&R Fund"). The 1950 W&R Fund was an "irrevocable trust created pursuant to Section 302(c) of the 'Labor-Management Relations Act, 1947.'" 1950 NBCWA.

11. The 1950 W&R Fund was designed to pay "benefits to employees of said operators, their families and dependents for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or life insurance, disability and sickness insurance or accident insurance . . . [and] benefits on account of sickness, temporary disability, permanent disability, death or retirement." Signatory mine operators were required to contribute thirty cents (30¢) per ton "during the life of this Agreement." The obligation to make such contributions was "several and not joint" among the signatory operators. 1950 NBCWA.

12. Eastern was a signatory to the 1950 NBCWA. Through its former Coal Division, Eastern mined coal in the states of West Virginia, Pennsylvania and Kentucky. Eastern used UMWA-represented employees at its coal mining operations.

13. The 1950 NBCWA was amended, effective January 18, 1951 ("1951 Amendment"), to reflect the creation of the Bituminous Coal Operators' Association ("BCOA") as the collective bargaining representative for certain member operators and as primary negotiator with the UMWA for the 1951 Amendment and subsequent NBCWAs. The 1951 Amendment did not alter the provisions relating to the 1950 W&R Fund. The BCOA was a signatory to the 1951 Amendment, and Eastern, by reason of the operations of its former Coal Division, was a member of the BCOA.

14. The 1950 NBCWA was amended through negotiations between the UMWA and the BCOA, effective October 1, 1952 ("1952 Amendment") to provide for increased contributions to the 1950 W&R Fund from thirty cents (30¢) to forty cents (40¢) per ton. The BCOA was a signatory to the 1952 Amendment, and Eastern, by reason of the operations of its former Coal Division, was a member of the BCOA.

15. The 1950 NBCWA was later amended through negotiations between the UMWA and the BCOA, effective September 1, 1955 ("1955 Amendment"), effective October 1, 1956 ("1956 Amendment") and effective December 1, 1958 ("1958 Amendment"). The 1955 Amendment, 1956 Amendment and 1958 Amendment did not alter the provisions relating to the 1950 W&R Fund. The BCOA was a signatory to the 1955, 1956 and 1958 Amendments, and Eastern, by reason of the operations of its former Coal Division, was a member of the BCOA.

16. The 1950 NBCWA was later amended through negotiations between the UMWA and the BCOA, effective April 2, 1964 ("1964 Amendment"). The 1964 Amendment modified the provisions of the 1950 W&R Fund by adding an obligation to contribute eighty cents (80¢) per ton for purchased or acquired coal. On information and belief, Eastern was a signatory, by reason of the operations of its former Coal

Division, to the 1964 Amendment through its membership in the BCOA.

17. Eastern ceased mining coal prior to 1966 when it transferred its coal mining operations to EACC, a wholly-owned subsidiary. Eastern formed EACC in 1963 as a separate corporation. By January 1, 1966, EACC assumed all present and future liabilities of Eastern arising out of or relating to Eastern's coal mining and marketing operations (with the exception of several leases for which Eastern remained responsible along with EACC). By the end of the 1966 fiscal year, Eastern had made substantial contributions into the 1950 W&R Fund of over $50 million, fully satisfying all of its contractual obligations to the UMWA and to its UMWA-represented employees.

18. As of January 1, 1966, EACC replaced Eastern for all purposes as a signatory to the 1964 and all prior NBCWAs; EACC was a signatory to all subsequent NBCWAs, including the 1974, 1978 and 1988 NBCWAs.

19. From January 1, 1966 on, EACC continued and expanded the operations of Eastern's former Coal Division, initially using the same mines, the same miners, the same equipment and the same management. EACC accurately held itself out to the world as the "successor" to Eastern's former Coal Division.

20. In the usual course of business, EACC accepted and fulfilled all of Eastern's former Coal Division obligations, including making payments to retirees of Eastern's former Coal Division who had never worked for EACC, and assuming responsibility for black lung claims for claimants who had been employed by Eastern, but not by EACC.

21. The 1950 NBCWA was again amended through negotiations between the UMWA and the BCOA, effective April 1, 1966 ("1966 Amendment"). The 1966 Amendment did not alter the provisions relating to contributions to the 1950 W&R Fund.

22. Eastern was not a signatory to the 1966 Amendment or to any later NBCWA agreement or amendment because Eastern had ceased mining operations upon the transfer of all such operations, assets and obligations to EACC, which transfer was completed by January 1, 1966.

23. After 1966, the UMWA and the BCOA negotiated numerous Amendments to the 1950 NBCWA, and a number of new NBCWAs, affecting the 1950 W&R in various ways.

24. The UMWA and the operators that were members of the BCOA negotiated new National Bituminous Coal Wage Agreements in 1968 and 1971 ("1968 and 1971 NBCWAs"). The 1968 and 1971 NBCWAs did not alter the provisions relating to contributions to the 1950 W&R Fund.

25. The UMWA and the operators that were members of the BCOA negotiated a new National Bituminous Coal Wage Agreement in 1974 ("1974 NBCWA"). Partly in response to the enactment of ERISA, the BCOA and the UMWA created a new set of Pension Trusts and Health Benefit Plans. The 1974 NBCWA created the UMWA 1950 Pension Trust ("1950 Pension Trust") and transferred to it the assets of the 1950 W&R Fund. The 1974 NBCWA also created three new plans: the 1974 Pension Trust and two Health Benefit Plans: the UMWA 1950 Benefit Plan and Trust ("1950 Health Benefit Plan") and the UMWA 1974 Benefit Plan and Trust ("1974 Health Benefit Plan"). The Health Benefit Plans provided health and other benefits to retired coal miners (the 1950 Health Benefit Plan for miners who retired before January 1, 1976 and the 1976 Health Benefit Plan for miners who retired after January 1, 1976).

26. The 1974 NBCWA changed the manner in which signatory employers made contributions. All of the assets of the 1950 W&R Fund – including all of the contributions of Eastern – were transferred to the 1950 Pension Fund. The 1974 Pension Fund, and the Health Benefit Plans, were established

without reserves, but were financed with contributions from signatory employers commencing on the effective date of the 1974 NBCWA.

27. The 1974 NBCWA also changed the class of beneficiaries entitled to benefits by greatly expanding it. Prior to the 1974 NBCWA, only "Widows of Men Killed in Mines" were entitled to "[c]ontinuation of hospital and medical coverage." 1971 NBCWA. The 1974 NBCWA provided, by contrast, that "[a]ny pensioned miner covered in this Plan will retain his Health Services card until death, and upon his death his widow will retain a Health Services card until her death or remarriage." 1974 NBCWA.

28. The UMWA and the BCOA negotiated another new NBCWA in 1978 ("1978 NBCWA"). The 1978 NBCWA modified the Health Benefit Plans created in 1974. The Agreement required that health benefits for miners who retired after January 1, 1976 be provided by individual plans of signatory operators (rather than the 1974 Health Benefit Plan), and that the 1974 Health Benefit Plan be used exclusively to provide health benefits to miners who retired after January 1, 1976 and whose operators were "no longer in business." 1978 NBCWA.

29. In negotiations for the 1978 NBCWA, the UMWA and the BCOA agreed to a "guarantee" clause which provided:

> Notwithstanding any other provisions in this Agreement the Employers hereby agree to fully guarantee the pension and health benefits provided by the 1950 Pension Fund, the 1950 Benefit Fund, the 1974 Pension Fund, the 1974 Benefit Fund and all other benefit plans described in Section (c) of this Article XX during the term of this Agreement.

30. The "guarantee" clause obligated signatory operators, for the first time, to make sufficient contributions to assure payment of health and other benefits provided by the 1950 Health Benefit Plan and the 1974 Health Benefit Plan. Prior to 1978, no signatory coal operator had any obligation to make up

any deficits, and no right to demand any particular benefits for its miners in the benefit programs of the 1950 and 1974 Health Benefit Plans, or their predecessor, the 1950 W&R Fund. Prior to 1978, signatory coal operators agreed to contribute at a set rate based on tons of coal mined, but they did not guarantee that those contributions would be sufficient to assure payment of any particular level or particular kind of health benefits to beneficiaries.

31. As a result of negotiations leading to the 1978 NBCWA, the Plan documents for the 1950 and 1974 Health Benefit Plans, which were incorporated by reference into the 1978 NBCWA, included, for the first time, what is known as the "Evergreen Clause." The "Evergreen Clause" reads:

> Any Employer who employed any Participant eligible for coverage under, or who received or receives benefits under, the 1950 [1974] Benefit Plan and Trust, or any Employer who was or is required to make, or who has made or makes contributions to the 1950 [1974] Benefit Plan and Trust, is obligated and required to comply with the terms and conditions of the 1950 [1974] Benefit Trust, as amended from time to time, including, but not limited to, making the contributions required under the National Bituminous Coal Wage Agreement of 1978, as amended from time to time, and any successor agreements thereto.

1950 Health Benefit Plan (February 1988). The "Evergreen Clause" has been interpreted to mean that the signatories to the 1978 NBCWA obligated themselves to continue making contributions to the 1950 and 1978 Health Benefit Plans notwithstanding their subsequent withdrawal from the BCOA or the expiration of other contractual obligations to the UMWA.

32. In negotiations for the 1978 NBCWA, the UMWA and the BCOA also agreed to give the BCOA the unilateral authority to increase contribution rates as necessary to fully fund benefits.

33. Successive NBCWAs were negotiated (in 1981, 1984, and 1988) between the UMWA and those operators that were members of the BCOA, in which contribution rates were increased.

34. In negotiations for the National Bituminous Coal Wage Agreement of 1988 ("1988 NBCWA"), the UMWA and the operators which were members of the BCOA agreed that if any signatory employer's contributions to the 1950 or 1974 Health Benefit Plan ceased for any reason, the signatory would be obligated to pay withdrawal liability.

35. The cumulative effect of the changes negotiated by the UMWA and the BCOA, as described in paragraphs 27 through 36, was to transform the 1950 W&R Fund, to which Eastern had once contributed, from a plan of limited contributor liability, under which the parties agreed that contributors would be obligated to make only such periodic contributions as were fixed by contract and would not be liable for further contributions if benefit costs outstripped accumulated plan funds, to plans which provided for potentially unlimited liability for the future costs of specified benefits. Eastern was never associated with such a plan and never agreed to any such obligation.

36. As a result of the increased levels of benefits promised and paid by the 1950 and 1974 Health Benefit Plans, the change in the funding formula from tonnage-based to hours-based, the decreased revenues caused by increased worker productivity and fewer man hours worked, the expansion of the class of beneficiaries and, most notably, the failure of the BCOA to increase contribution rates for signatory operators, the 1950 Health Benefit Plan experienced its first deficit in 1988, and the 1974 Health Benefit Plan experienced its first deficit in 1990.

The 1992 Coal Act

37. On October 24, 1992, President Bush signed the Coal Act into law as part of the Energy Policy Act of 1992. Eastern avers, upon information and belief, that the Coal Act guarantees

continued lifetime health and death benefits to the approximately 114,000 UMWA retirees, surviving spouses, and dependents who were receiving benefits from the 1950 or 1974 Health Benefit Plans as of July 20, 1992.

38. The Coal Act, in effect, creates three classes of current and former coal mining industry employers:

(i) signatories to the 1988 NBCWA or a "me-too" agreement patterned after the 1988 NBCWA ("1988 Agreement Operators");

(ii) employers that did not sign the 1988 NBCWA, but were signatories to any pre-1988 NBCWA between 1950 and 1978 ("Reachback Companies"); and

(iii) employers that were never signatory to an NBCWA ("Non-signatory Employers").

39. Prior to the enactment of the Coal Act, the 1988 Agreement Operators were contractually required to satisfy the obligations of the 1950 and 1974 Health Benefit Plans including lifetime health benefits for the beneficiaries. The Coal Act for the first time purports to impose that contractual obligation on companies who were not signatories to the 1988 Agreement. Furthermore, the Coal Act purports to impose the same obligation on companies who were not even signatories to the 1974 or the 1978 Agreements. The Coal Act guarantees lifetime health benefits that Operators had contracted to provide between 1974 and 1988, but purports to make all Reachback Companies, including those that signed neither the 1974 nor the 1978 Agreement, responsible for making premium payments to fund those benefits.

40. Over and above the health benefits provided by the Coal Act, the Coal Act purports to make Reachback Companies responsible for making premium payments sufficient to provide death benefits identical to those provided under the 1950 Pension Trust or 1974 Pension Trust as of July 20, 1992.

41. Section 9702 of the Coal Act created the UMWA Combined Benefit Fund ("Combined Fund"). The Coal Act divides beneficiaries of the Combined Fund into two groups: (i) assigned beneficiaries, i.e., those UMWA retirees who once worked for a 1988 Agreement Operator or a Reachback Company, and the spouses or certain dependents of those UMWA retirees; and (ii) unassigned beneficiaries, i.e., those UMWA retirees who worked for a company that no longer exists, but that once signed an NBCWA at any time between 1950 and July 20, 1992, and the spouses or certain dependents of those retirees.

42. The Coal Act purports to require the Secretary to assign to Eastern as a Reachback Company both former employees (and spouses or dependents) and a percentage of unassigned beneficiaries. Consequently, if the assignments made by the Secretary are not withdrawn, Eastern will be liable for annual premiums in excess of $3 million to pay for health and death benefits with respect to former employees, their spouses and dependents and unassigned beneficiaries.

43. The Coal Act makes no provision for the refund of premiums paid to the Combined Fund in the event the Coal Act is found to be unconstitutional as applied to any contributor to the Combined Fund.[1]

44. The Secretary has delegated her authority to assign individuals to operators under the Coal Act to the Social Security Administration (the "SSA").

45. By Notices dated September 28, October 7, October 8, October 15, October 18, October 19, and October 22, 1993 (the "Notices of Assignment"), Eastern was informed by the SSA that it had been assigned liability under the Coal Act for a total of approximately 2284 retired miners, surviving spouses, and dependents. Of the approximately 1180 identified miners, 1177

[1] § 9706(f)(3)(A)(i) of the Coal Act provides a credit system for payments made due to ministerial errors but provides no refund mechanism.

had last worked for Eastern, according to the Notices of Assignment, prior to 1966. (Clearly, at least the three post-1965 miners were assigned to Eastern in error, as Eastern had by that time already transferred its former coal mining operations to EACC.)

46. In the case of approximately 941 miners (and approximately 904 other beneficiaries), the Notices of Assignment sent to Eastern stated that Eastern was the operator found to have employed the miners under a UMWA agreement for the longest period of time before 1978, i.e., as a Reachback Company.

47. In the case of approximately 212 miners (and approximately 194 other beneficiaries), the Notices of Assignment erroneously asserted that Eastern was the last operator to employ the miners under an agreement for at least two years and that Eastern was a signatory to a 1978 or later UMWA agreement. Eastern was not a signatory to a 1978 or later agreement.

48. In the case of approximately 27 miners (and approximately 29 other beneficiaries), the Notices of Assignment erroneously asserted that Eastern was the last operator to employ the miners under an agreement and that Eastern was a signatory to a 1978 or later UMWA agreement. Eastern was not a signatory to a 1978 or later agreement.

49. The Coal Act and the Notices of Assignment sent pursuant thereto purport to demand from Eastern a premium having three components. First, the Coal Act requires the Secretary to assess against Eastern a premium sufficient to cover costs of health benefits for retirees who worked for Eastern decades ago, as well as the surviving spouses and dependents of such retirees. Second, the Coal Act requires a similar premium assessment for unassigned miners and their surviving spouses and dependents. These premiums are based on the 1992 cost of benefits provided by the 1950 and 1974 Health Benefit Plans, plus administrative costs, adjusted thereafter for inflation.

Third, the Coal Act requires the Secretary to assess against Eastern a premium sufficient to cover costs of death benefits for particular beneficiaries. In addition to these three components, the Coal Act purports to assess against Eastern an additional amount in the first year of payments. Because the Coal Act imposes premium liability beginning with February 1993, but does not begin to assess those premiums until October of 1993, the final component of the premium is a partial payment of those past accrued premiums. The aggregate premium is to be contributed to the Combined Fund created under the Coal Act.

50. By Memorandum dated October 22, 1993 from the Trustees of the Combined Fund, Eastern was notified that it would be required to pay a monthly premium to the Combined Fund, beginning with the month of October 1993, of $421,109.18. The deadline for payment of the October premium was deferred until November 8, 1993. Thereafter, beginning November 25, 1993, according to the Memorandum, monthly premiums would be due on the 25th of each month.

51. The Memorandum sent by the Combined Fund states that the premiums payable for the period beginning October 1993 do not include any amount attributable to death benefits or unassigned persons, inasmuch as the costs of such coverage have been satisfied for the moment with funds transferred from the 1950 Pension Trust. Nevertheless, Eastern avers, upon information and belief, that notwithstanding this temporary relief, the Coal Act by its terms would eventually require Eastern to contribute substantial additional premiums for death benefits and benefits for unassigned persons.

52. Pursuant to the Financial Accounting Standards Board Standard No. 106, Eastern was required to immediately reflect on its financial reports the value of contributions that the Coal Act would require it to pay into the Combined Fund over the lifetime of the fund. This adjustment substantially reduced the net worth of Eastern and resulted in a substantial loss for the fiscal year ending December 31, 1993.

53. Eastern is a Reachback Company which no longer operates bituminous coal mines. Upon information and belief, under the Coal Act, Eastern must pay premiums with respect to benefits for former employees to whom it had never promised such benefits and also for an indeterminate number of unassigned individuals with whom Eastern has never had an employment relationship. Because the number of unassigned individuals is a function, in part, of the number of operators or former operators to which individuals may be assigned, excluding operators or former operators that have gone out of business or will go out of business, Eastern estimates that its proportionate share of unassigned individuals, and the absolute number of unassigned individuals for which Eastern will be responsible, will increase.

54. The liability allegedly owed by Eastern under the Coal Act is one that EACC assumed when it took over Eastern's former Coal Division in 1966. The liability relates to Eastern's former coal operations and was, accordingly, transferred to EACC and remained with EACC when it was acquired by Peabody Coal Co.

Eastern's Request for Relief
on Successor Company Grounds

55. Eastern was advised by the SSA, in the various Notices of Assignment, that Eastern had "the right to ask [the SSA] to review the assignment. ... [based upon] evidence that ... shows [the SSA's] assignment was in error. ... If you do not give [the SSA] evidence, [the SSA] will not review the assignment."

56. Other than brief references to the Coal Act, the SSA's Notices of Assignment gave no indication of the criteria under which the SSA made the original assignments or by which the SSA would judge a request for review or its supporting evidence, nor the procedure under which the request for review should be pursued. Rather, the SSA merely stated that an assigned operator may obtain relief upon presentation of "prima facie" evidence that the assignment was in error. As examples of such

evidence, the SSA referred to "legal documents such as incorporation, merger and bankruptcy papers, ... payroll and other employment business records, and information in trade journals and newspapers."

57. On December 21, 1993, Eastern submitted to the SSA a Freedom of Information Act request for information on the SSA's assignment criteria, including information regarding the SSA's approach to assignments to a successor company under the Coal Act.

58. In response to that Freedom of Information Act request, Eastern received, among other material, a copy of Transmittal No. 9 (SSA Pub. No. 68-0101402) (Jan. 1994), which contains instructions regarding the circumstances under which a "successor company" can be responsible for the Coal Act liability of a signatory operator.

59. On April 27, 1994, Eastern submitted a written request to the SSA for guidance on a series of procedural issues, including the process for pursuing relief from the Coal Act under the successor company provisions of Transmittal No. 9.

60. On May 26, 1994, the SSA advised Eastern in writing that Eastern could apply for relief from liability under the Coal Act by submission of "prima facie evidence that its status is such that no assignments should be made to it" because Eastern "transferred the mining operations to another company which ought to be the assignee . . . ." In subsequent oral communications, the SSA again urged Eastern to make its submission for relief from the Coal Act on successor company grounds.

61. On June 17, 1994, Eastern submitted to the SSA its request that all beneficiaries assigned to Eastern be reassigned to its successor, EACC. The request was supported by a memorandum of law and factual materials, including affidavits and relevant documents. This submission demonstrated that EACC is a 1978 signatory which became the successor as of January 1, 1966 to all of Eastern's coal-related liabilities,

including any liabilities that could be assigned to Eastern under the Coal Act.

62. On July 25, 1994, the SSA advised Eastern that, despite the SSA's written and oral invitation to seek "successor company" relief, no action would be taken on Eastern's submission until after Eastern had filed all of its individual beneficiary requests for review. The SSA subsequently confirmed that Eastern would be required to make the individual beneficiary submissions prior to any determination on the successor company issue. On September 10, 1994, Eastern submitted 34 boxes to the SSA containing requests for review of the assignments of 1,079 individual beneficiaries, as well as a request for complete relief from the Coal Act on procedural due process grounds, along with a memorandum of law.

63. On January 18, 1995, the SSA notified Eastern of its denial of Eastern's request that all beneficiaries assigned to Eastern under the Coal Act be reassigned to EACC on successor company grounds. The SSA further advised Eastern that it would be afforded no opportunity to appear and present an argument on the successor company issue to the SSA's staff.

64. The SSA then sent to Eastern a copy of "Coal Act Supplemental Review Instructions #3," dated December, 1994, which instructions set forth for the first time the SSA's new, revised position that when a signatory operator remains in business, no consideration is given to the existence of any successor to that signatory operator in making a determination on assignments.

65. On January 30, 1995, Eastern received the SSA's first official response to a request for review of an assignment of an individual beneficiary to Eastern. The SSA rejected Eastern's request that Samuel E. East and Josephine East (a beneficiary whose assignment to Eastern was based on the employment of her husband, Samuel E. East) be reassigned to EACC, clearly

indicating that the SSA had decided that no beneficiaries would be reassigned to EACC by reason of successorship.

66. In its decision, the SSA stated that "the 1966 reorganization of [Eastern's] mining assets into a subsidiary, Eastern Associated Coal Corporation, did not constitute a transfer of Eastern Enterprises' liability for Coal Act premiums for past periods. The transfer could not establish Eastern Associated Coal Corporation as a 'successor' because Eastern Enterprises remained in business. Nor did the subsequent sale of its subsidiary relieve Eastern Enterprises of liability for assignments. Any sales agreement calling for the buyer to indemnify, reimburse, or assume responsibilities for the seller's past liabilities is a private agreement between the parties and has no effect on the assignment provisions of the Coal Act."

67. This decision was apparently based on the newly-issued Supplemental Coal Act Review Instructions #3, which state, in pertinent part, "If the assignee is the signatory operator that employed the miner 'in the coal industry,' AND it remains 'in business' within the meaning of the Coal Act; Then the assignee is responsible under the Coal Act, regardless of whether or not there is a 'successor' company." Id. at 35.

68. The SSA's decision also stated that "[b]ased on [the SSA's] review, [the SSA had] determined that Eastern Enterprises would remain eligible for assignments under the Coal Act and would be responsible for the health and death premiums of Samuel E. East and his eligible relatives." On information and belief, Samuel E. East is dead.

69. If the Coal Act is enforced against Eastern, Eastern will be irreparably harmed. The Coal Act contains no refund provisions, leaving Eastern no remedy at law to recover any payments made to the Combined Fund. A finding of unconstitutionality by this Court will not trigger a remedy for Eastern if it has already contributed under the Coal Act.

COUNT I

70. Eastern restates and incorporates herein by reference the allegations in paragraphs 1-69 of the Complaint.

71. Pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq, the Secretary's decision that EACC's status as Eastern's successor is irrelevant to assignments under the Coal Act is arbitrary, capricious, an abuse of discretion, unreasonable and unconstitutional, and is an impermissible interpretation of the Coal Act.

COUNT II

72. Eastern restates and incorporates herein by reference the allegations in paragraphs 1-69 of the Complaint.

73. Under 28 U.S.C. § 2201(a), there is an actual controversy as to Eastern's rights and obligations under the Coal Act. Under a proper interpretation of the Coal Act, Eastern is entitled to a determination that EACC is Eastern's successor, and that all assignments originally made to Eastern under the Coal Act should be reassigned to EACC.

COUNT III

74. Eastern restates and incorporates herein by reference the allegations in paragraphs 1-69 of the Complaint.

75. The Coal Act, on its face or as applied to Eastern, deprives Eastern of "property . . . without due process of law," in violation of the Fifth Amendment of the United States Constitution.

COUNT IV

76. Eastern restates and incorporates herein by reference the allegations in paragraphs 1-69 of the Complaint.

77. The Coal Act, on its face or as applied to Eastern, takes from Eastern "private property . . . for public use, without just compensation," in violation of the Fifth Amendment of the United State Constitution.

PRAYER FOR RELIEF

WHEREFORE, Eastern requests that this Court:

1. Reverse or set aside the Secretary's decision that EACC's status as Eastern's successor is irrelevant to assignments made by the SSA under the Coal Act as arbitrary, capricious, an abuse of discretion, unreasonable and unconstitutional and as an impermissible reading of the Coal Act, pursuant to the Court's authority under the Administrative Procedure Act, 5 U.S.C. §§ 551 et seq;

2. Declare, pursuant to 28 U.S.C. §2201(a), that, under the Coal Act, the SSA must consider the existence of successor companies in its assignment analysis, that EACC is Eastern's successor, and that the Secretary is required to reassign all miners originally assigned to Eastern to EACC as Eastern's successor under the Coal Act;

3. Declare that the Coal Act, on its face or as applied to Eastern, violates the Due Process Clause of the Fifth Amendment of the United States Constitution;

4. Declare that the Coal Act, on its face or as applied to Eastern, violates the Takings Clause of the Fifth Amendment of the United States Constitution;

5. Order the Secretary to rescind the assignments of miners and beneficiaries to Eastern pursuant to the Coal Act;

6. Enjoin the Secretary from taking any action to apply or enforce the Coal Act with respect to Eastern;

7. Enjoin the Trustees of the Combined Fund and the Combined Fund from taking any action to collect premiums from Eastern under the Coal Act; and

8. Provide such further relief as is just and equitable.

Respectfully submitted,

EASTERN ENTERPRISES,
by its attorneys,

/s/ Ellen Solomon-Gonzales
John T. Montgomery, BBO #352220
William S. Elias, BBO #363626
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Dated: February 15, 1995

(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

(Caption Omitted)

FEDERAL DEFENDANT'S ANSWER TO
FIRST AMENDED COMPLAINT

Federal Defendant Secretary of Health and Human Services Donna E. Shalala ("Secretary"), by her undersigned counsel, answers the First Amended Complaint in the above-entitled action as follows:

FIRST DEFENSE

Plaintiff Eastern Enterprises fails to state a claim for which relief can be granted.

SECOND DEFENSE

The takings claim asserted in this First Amended Complaint is premature because it nowhere alleges that plaintiff has sought a determination whether compensation is available for any taking by filing an action in the Court of Federal Claims.

THIRD DEFENSE

Plaintiff has failed to join Eastern Associated Coal Corporation and Peabody Holding Company, Inc. as necessary parties to this litigation.

FOURTH DEFENSE

In response to the numbered paragraphs of plaintiff's First Amended Complaint, the Secretary answers as follows:

PRELIMINARY STATEMENT

1. This paragraph contains introductory statements and legal conclusions to which no answer is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this introductory paragraph.

2. This paragraph contains introductory statements and legal conclusions to which no answer is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this introductory paragraph.

JURISDICTION AND VENUE

3. This paragraph sets forth plaintiff's legal conclusions to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this paragraph as to Count IV of the First Amended Complaint since plaintiff has failed to seek a determination whether compensation is available for any taking by filing an action in the Court of Federal Claims.

4. This paragraph sets forth plaintiff's legal conclusions to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies that 28 U.S.C. § 1391(e) confers venue over Count IV of plaintiff's First Amended Complaint.

PARTIES

5. The Secretary lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

6. Defendant Secretary admits that she is currently the Secretary of Health and Human Services. The Secretary denies the allegations in the second sentence of this paragraph except to admit that the Secretary performs some of her official duties in Washington, D.C.. The third sentence of this paragraph set forth plaintiff's legal conclusions and characterizations to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this sentence except to admit that, pursuant to sections 9704 and 9706 of the Coal Act, the Secretary of Health and Human Services is generally responsible for (i) assigning eligible beneficiaries of the United Mine Workers of America Combined Benefit Fund

("Combined Fund") to coal operators (or their related persons) who were signatory to one or more coal wage agreements and for (ii) calculating annual per-beneficiary health benefit premiums.

7. The Secretary denies that Joseph P. Connors, Sr. and John Doe are Trustees of the Combined Fund. The Secretary admits that Marty D. Hudson, Thomas O.S. Rand, Elliot A. Segal, Carlton R. Sickles, and Gail R. Wilensky are Trustees of the Combined Fund. The Secretary further admits that the offices of the Trustees of the Combined Fund are located at 4455 Connecticut Avenue, N.W., Washington, D.C. 20008. The remaining allegations in this paragraph set forth plaintiff's legal conclusions and characterizations to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this sentence except to admit that section 9704 of the Coal Act provides that each assigned operator shall make annual Coal Act premium payments (for each plan year) to the Combined Fund.

8. The Secretary admits the first three sentences of this paragraph. The Secretary lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the fourth sentence of this paragraph.

FACTS

History of the United Mine Workers of America Fund

9. The Secretary admits the allegations in this paragraph.

10. The Secretary admits the allegations in the first sentence of this paragraph. The Secretary admits that the 1950 National Bituminous Wage Agreement ("NBCWA") created the United Mine Workers of America Welfare and Retirement Fund of 1950 ("1950 W&R Fund") and respectfully refers the Court to the 1950 NBCWA for a full and complete statement of its terms. The Secretary admits that the 1950 NBCWA contains the language quoted in the third sentence of this paragraph and

respectfully refers the Court to the 1950 NBCWA for a full and complete statement of its terms.

11. The Secretary admits that the 1950 NBCWA contains the language quoted in the first sentence of this paragraph and respectfully refers the Court to the 1950 NBCWA for a full and complete statement of its terms. The Secretary admits that signatory operators to the 1950 NBCWA were respectively obligated to pay thirty cents per ton of 2,000 pounds of each ton of coal produced for use or for sale. The Secretary admits that the 1950 NBCWA contains the language quoted in the third sentence of this paragraph and respectfully refers the Court to the 1950 NBCWA for a full and complete statement of its terms.

12. The Secretary admits that plaintiff was a signatory to the 1950 NBCWA. The Secretary admits upon information and belief the remaining allegations in this paragraph.

13. The Secretary admits that the 1950 NBCWA was amended in 1951 with an effective date of February 1, 1951 ("1951 Amendments"), to, inter alia, reflect the creation of the Bituminous Coal Operators' Association ("BCOA") as the collective bargaining representative for certain coal operators, companies, and associations in the negotiation of wage agreements with the United Mine Workers of America ("UMWA"). The Secretary denies the allegations in the second sentence of this paragraph. The Secretary admits that the BCOA was a signatory to the 1951 Amendments. The Secretary further admits upon information and belief that plaintiff was a member of the BCOA.

14. The Secretary admits that the 1950 NBCWA was amended in 1952 with an effective date of October 1, 1952 ("1952 Amendments"). The Secretary further admits that the 1952 Amendments obligated signatory coal operators to respectively pay forty cents per ton of 2,000 pounds of each ton of coal produced for use or for sale and respectfully refers the Court to the 1952 Amendments for a full and complete state-

ment of its terms. The Secretary admits that the BCOA was a signatory to the 1952 Amendments. The Secretary further admits upon information and belief that plaintiff was a member of the BCOA.

15. The Secretary admits that the 1950 NBCWA was amended in 1955 with an effective date of September 1, 1955 ("1955 Amendments"), in 1956 with an effective date of October 1, 1956 ("1956 Amendments"), and in 1958 with an effective date of December 1, 1958 ("1958 Amendments"). The Secretary denies the allegations in the second sentence of this paragraph. The Secretary admits that the BCOA was a signatory to the 1952, 1956, and 1958 Amendments. The Secretary further admits upon information and belief that plaintiff was a member of the BCOA.

16. The Secretary admits that the 1950 NBCWA was amended in 1964 with an effective date of April 2, 1964 ("1964 Amendments"). With respect to the second sentence of this paragraph, the Secretary admits that the 1964 Amendments obligated signatory coal operators, or any subsidiary or affiliate of such operator, to pay eighty cents per ton of 2,000 pounds to the 1950 W&R Fund for each ton of bituminous coal procured or acquired by that operator, subsidiary, or affiliate and respectfully refers the Court to the 1964 Amendments to the 1950 NBCWA for a full and complete statement of its terms. The Secretary admits upon information and belief that plaintiff was a signatory to the 1964 Amendments through its membership in the BCOA.

17. The Secretary lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

18. The Secretary lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph except to admit that EACC was a signatory to several post-1964 NBCWAs, including the 1974, 1978, and 1988 NBCWAs.

19. The Secretary lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

20. The Secretary lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph.

21. The Secretary admits that the 1950 NBCWA was amended in 1966 with an effective date of April 1, 1966 ("1966 Amendments"). The Secretary denies the allegations in the second sentence of this paragraph.

22. The Secretary lacks knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph except to deny that plaintiff was not a signatory to the 1966 Amendments or to any later NBCWAs given that plaintiff's wholly-owned subsidiary (EACC) signed several post-1964 NBCWAs, including the 1966 Amendments and the 1968, 1971, 1974, 1978, 1981, 1984 and 1984 NBCWAs.

23. The Secretary admits that, subsequent to 1966, UMWA and the BCOA entered into new NBCWAs in 1968, 1971, 1974, 1978, 1981, 1984, and 1988. The Secretary denies that UMWA and the BCOA entered into any amendments to the 1950 NBCWA subsequent to the 1966 Amendments. The Secretary respectfully refers the Court to the 1966 Amendments and these new NBCWAs for a full and complete statement of their respective terms.

24. The Secretary admits that UMWA and the BCOA entered into new NBCWAs in 1968 and 1971. The Secretary denies the allegations in the second sentence of this paragraph.

25. The Secretary admits that UMWA and the BCOA entered into a new NBCWA in 1974. With respect to the remaining allegations in this paragraph, the Secretary admits that the 1974 NBCWA provided for the separation of the 1950 W&R Fund into four multiemployer plans: (i) the UMWA 1950

Benefit Plan and Trust ("1950 Benefit Fund") (providing health benefits to miners who retired before January 1, 1976 and their dependents); (ii) the UMWA 1974 Benefit Plan and Trust ("1974 Benefit Fund") (providing health benefits to both active miners and retired miners who retired on or after January 1, 1976 and their dependents); (iii) the UMWA 1950 Plan and Pension Trust ("1950 Pension Fund") (providing pension benefits to miners who retired before January 1, 1976); and (iv) the UMWA 1974 Pension Plan and Trust ("1974 Pension Fund") (providing pension benefits to miners who retired after January 1, 1976). The Secretary further admits that the 1950 Pension Fund succeeded to the assets of the 1950 W&R Fund. The Secretary denies the remaining allegations in this paragraph.

26. The first sentence of this paragraph contains plaintiff's legal conclusions and characterizations to which no answer is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this sentence. The Secretary lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second and third sentences of this paragraph.

27. The first sentence of this paragraph contains plaintiff's legal conclusions and characterizations to which no answer is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this sentence. With respect to the second sentence of this paragraph, the Secretary admits that certain NBCWAs or other trust documents prior to 1974 contained the language quoted therein and respectfully refers the Court to these pre-1974 NBCWAs and trust documents for a full and complete statement of their respective terms. With respect to the third sentence of this paragraph, the Secretary admits that the 1974 NBCWA contains the language quoted therein and respectfully refers the Court to the 1950 NBCWA for a full and complete statement of its terms.

28. The Secretary admits that UMWA and the BCOA entered into a new NBCWA in 1978. With respect to the remaining allegations in this paragraph, the Secretary admits

that the 1978 NBCWA modified the then-existing UMWA Benefit Funds' structure and respectfully refers the Court to the 1978 NBCWA for a full and complete statement of its terms.

29. The Secretary admits that the Art. XX(h) of the 1978 NBCWA contains the quoted language and respectfully refers the Court to the 1978 NBCWA for a full and complete statement of its terms.

30. This paragraph sets forth legal conclusions to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this paragraph except to admit that certain federal courts have addressed issues relating to the interpretation of the so-called "Guarantee Clause."

31. The Secretary admits that the 1978 NBCWA incorporated by reference documents containing a so-called "Evergreen Clause" and that such clause had not been incorporated by reference in previous NBCWAs. The Secretary further admits that documents incorporated by reference into the 1978 NBCWA contain the language quoted in the second sentence of this paragraph and respectfully refers the Court to the 1978 NBCWA for a full and complete statement of its terms and incorporated documents. The third sentence of this paragraph sets forth legal conclusions to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this paragraph except to admit that certain federal courts, including United Mine Workers of Am. 1974 Pension Plan v. Pittston Co., 984 F.2d 469 (D.C. Cir.), cert. denied, ___ U.S. ___, 113 S.Ct. 3039 (1993), have addressed issues relating to the interpretation of the "Evergreen Clause" and respectfully refers the Court to such decisions for a full and complete statement of their terms.

32. This paragraph sets forth legal conclusions to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this paragraph.

33. The Secretary admits that UMWA and the BCOA entered into NBCWAs in 1981, 1984, and 1988. The Court respectfully refers the Court to these NBCWAs for a full and complete statement of their respective terms.

34. The Secretary admits that Art. XX(i)-(j) of the 1988 NBCWA contained so-called "withdrawal liability" provisions and respectfully refers the Court to the 1988 NBCWA for a full and complete statement of its terms.

35. This paragraph sets forth legal conclusions to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this paragraph.

36. The Secretary admits that the 1950 and 1974 Benefit Funds experienced their first overall deficits in fiscal years 1988 and 1990 respectively. The Secretary denies the remaining allegations in this paragraph.

The 1992 Coal Act

37. The Secretary admits the first sentence of this paragraph. The second sentence of this paragraph sets forth legal conclusions to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this sentence except to admit that the Coal Act generally provides for the Combined Fund to pay health and death benefits to eligible beneficiaries and respectfully refers the Court to the Coal Act for a full and complete statement of its terms.

38. This paragraph sets forth legal conclusions to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this paragraph.

39. The first sentence of this paragraph sets forth legal conclusions to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this sentence except to admit that the 1988 NBCWA obligated signatory operators to make specified contributions to the 1950 and 1974 Benefit Funds and respectfully refers the Court to the 1988 NBCWA for a full and

complete statement of its terms. The second sentence of this paragraph sets forth legal conclusions to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this sentence. The third sentence of this paragraph sets forth legal conclusions to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this sentence except to admit that section 9704 of the Coal Act obligates signatory coal operators (or their related persons), whether signatory to the 1974 NBCWA, 1978 NBCWA, or any other coal wage agreement, to make specified premium payments to the Combined Fund.

40. This paragraph sets forth legal conclusions to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this paragraph except to admit that section 9704(c) of the Coal Act provides a statutorily-enumerated formula for the calculation of each assigned operators' annual death benefit premium obligations, if any, for each plan year. The Secretary further avers that the Combined Fund's October 1993 memorandum to plaintiff assessed no death benefit premiums for the first and second plan years.

41. The Secretary admits that section 9702 of the Coal Act established the Combined Fund. The second sentence of this paragraph sets forth plaintiff's legal conclusions and characterizations of the Coal Act to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this sentence except to admit that section 9706 of the Coal Act sets forth a statutorily- mandated assignment process and respectfully refers the Court to this section of the Act for a full and complete statement of its terms.

42. The first sentence of this paragraph sets forth legal conclusions to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this sentence except to admit that section 9706 of the Coal Act requires the Secretary to assign eligible Combined

Fund beneficiaries to a signatory coal operator (or related person) which remains in business. The Secretary lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of this paragraph except to admit that the Combined Fund has assessed plaintiff an annual premium of $1,841,773.32 for the first Combined Fund plan year (commencing February 1, 1993 and ending September 30, 1993) and $3,211,536.90 for the second plan year (commencing October 1, 1993 and ending September 30, 1994). The Secretary denies that Eastern (or any other assigned operator) to date has been assessed any unassigned beneficiary premiums.

43. This paragraph (and accompanying footnote one) set forth plaintiff's legal conclusions and characterizations of the Coal Act to which no response is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this paragraph.

44. The Secretary admits the allegations of this paragraph.

45. The Secretary admits that plaintiff received several assignment notices from the Social Security Administration ("SSA") in September and October 1992 and respectfully refers the Court to such notices for a full and complete statement of the terms and assignments made therein. The Secretary denies the remaining allegations in this paragraph.

46. The Secretary denies the allegations in this paragraph except to admit that some of SSA's assignment notices identified certain Combined Fund beneficiaries as being assigned to plaintiff on the ground that it was the signatory operator employing the retired miner under an NBCWA for the longest period of time prior to 1978; the Secretary respectfully refers the Court to these assignment notices for a full and complete statement of their respective terms.

47. The Secretary admits that certain of SSA's assignment notices to plaintiff bore a legend, inter alia, identifying Eastern as a signatory to a 1978 or later NBCWA. The Secretary denies

that plaintiff was not a signatory to the 1966 Amendments or to any later NBCWAs given that plaintiff's wholly-owned subsidiary (EACC) signed several post-1964 NBCWAS, including the 1966 Amendments and the 1968, 1971, 1974, 1978, 1981, 1984 and 1984 NBCWAs. The Secretary denies the remaining allegations in this paragraph.

48. The Secretary admits that certain of SSA's assignment notices to plaintiff bore a legend, inter alia, identifying Eastern as a signatory to a 1978 or later NBCWA. The Secretary denies that plaintiff was not a signatory to the 1966 Amendments or to any later NBCWAs given that plaintiff's wholly-owned subsidiary (EACC) signed several post-1964 NBCWAs, including the 1966 Amendments and the 1968, 1971, 1974, 1978, 1981, 1984 and 1984 NBCWAs. The Secretary denies the remaining allegations in this paragraph.

49. The Secretary denies the allegations in the first sentence of this paragraph. The remaining sentences in this paragraph contain plaintiff's legal conclusions and characterizations of the Coal Act to which no response is required. Insofar as an answer is deemed to be required, the Secretary denies the allegations in these sentences except to admit that section 9704 of the Coal Act contains the liability provisions of assigned operators to the Combined fund and respectfully refers the Court to this section for a full and complete statement of its terms.

50. The Secretary admits on information and belief that, by memorandum dated October 22, 1993, the Combined Fund notified plaintiff that its monthly premium payments to the Combined Fund for the second plan year would be $421,109.18. The Secretary denies that plaintiff's first monthly premium payment became due in October 1993. The Secretary admits the allegations in the second and third sentences of this paragraph.

51. The Secretary admits on information and belief that the Combined Fund's October 1993 memorandum to plaintiff assessed no unassigned beneficiary or death benefit premiums

and respectfully refers the Court to this memorandum for a full and complete statement of its terms. The Secretary denies the remaining allegations in this paragraph.

52. The first sentence of this paragraph sets forth legal conclusions to which no response is required. Insofar as an answer may be deemed to be required, the Secretary lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. The Secretary lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the second sentence of this paragraph.

53. The Secretary lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of this paragraph. The second sentence of this paragraph contains plaintiff's characterizations of the Coal Act to which no answer is required. Insofar as an answer may be deemed to be required, the Secretary denies the allegations in this sentence except to admit that plaintiff is an "assigned operator" within the meaning of the Coal Act and thus obligated to make annual premium payments to the Combined Fund. The Secretary denies the allegations in the third sentence of this paragraph.

54. The Secretary denies the allegations in this paragraph.

Eastern's Request for Relief
on Successor Company Grounds

55. The Secretary admits that SSA notified plaintiff of its Combined Fund beneficiary assignments pursuant to section 9706(e) of the Coal Act and that such notices contained, in part, the language quoted in this paragraph. The Secretary respectfully refers the Court to these notices for a full and complete statement of their terms.

56. This paragraph sets forth plaintiff's legal conclusions and characterizations to which no response is required. Insofar as an answer may be deemed to be required, the Secretary admits only

that SSA notified plaintiff of its Combined Fund beneficiary assignments pursuant to section 9706(e) of the Coal Act and that such notices contained, in part, the language quoted in this paragraph. The Secretary respectfully refers the Court to these notices for a full and complete statement of their terms. The Secretary denies the remaining allegations in this paragraph.

57. The Secretary admits that counsel for plaintiff submitted a Freedom of Information Act ("FOIA") request dated December 21, 1993 and addressed to Ms. Rosario Cirrincione, Director, Freedom of Information Privacy Acts Division, Office of Public Affairs, Department of Health and Human Services, concerning the Coal Act. The Secretary respectfully refers the Court to this FOIA correspondence for a full and complete statement of its terms.

58. The Secretary admits that, by letter dated February 14, 1994, Mr. Harris Factor, Acting FOIA Officer, SSA, responded to plaintiff's December 1993 FOIA request and enclosed, inter alia, a copy of Transmittal No. 9 (SSA Pub. No. 68-0101402) (Jan. 1994). The Secretary respectfully refers the Court to Transmittal No. 9 for a full and complete statement of its terms.

59. The Secretary admits that counsel for plaintiff, by letter dated April 27, 1994, requested information from Ms. Marilyn O'Connell, Deputy Associate Commissioner for Retirement and Survivors Insurance, SSA, concerning certain so-called "procedural issues" underlying SSA's review of plaintiff's Combined Fund beneficiary assignments pursuant to section 9706(f) of the Coal Act. The Secretary respectfully refers the Court to this correspondence for a full and complete statement of its terms.

60. The Secretary admits that, by letter dated May 26, 1994, Ms. O'Connell responded in writing to plaintiff's April 1994 inquiry. The Secretary further admits that the O'Connell letter contains, in part, the language quoted in the first sentence of this paragraph and respectfully refers the Court to this correspondence for a full and complete statement of its terms. The

Secretary denies the allegations in the second sentence of this paragraph.

61. The Secretary admits that, by letter dated June 17, 1994, plaintiff filed a request for SSA review of all Combined Fund beneficiary assignments to Eastern pursuant to section 9706 of the Coal Act, and for reassignment of these beneficiaries to the alleged "successor company" to Eastern's coal operations, Eastern Associated Coal Corporation ("EACC"). With respect to the second sentence of this paragraph, the Secretary admits that plaintiff's request for review also enclosed a supporting memorandum and other documentary materials. The Secretary denies the allegations in the third sentence of this paragraph except to admit that EACC was a signatory to the 1978 NBCWA.

62. The Secretary denies the allegations in the first and second sentences of this paragraph. With respect to the third sentence of this paragraph, the Secretary admits that plaintiff, by letter dated September 9, 1994, submitted additional documentary materials in support of its request for review and respectfully refers the Court to these additional materials for a full and complete statement of their terms.

63. The Secretary denies the allegations in the first sentence of this paragraph except to admit that, by letter dated January 18, 1995, Ms. O'Connell responded to several inquiries posed by counsel for plaintiff regarding the administrative review process for Combined Fund beneficiary assignments pursuant to section 9706 of the Coal Act. The Secretary denies the allegations in the second sentence of this paragraph.

64. The Secretary admits that, accompanying Ms. O'Connell's correspondence of January 18, was a copy of "Coal Act Supplemental Review Instructions #3," (December 1994) ("Supplemental Instructions") The remaining allegations in this paragraph contain plaintiff's characterizations of these Supplemental Instructions to which no answer is required. To the extent an answer is deemed to be required, the Secretary denies

the remaining allegations in this paragraph except to admit that the Supplemental Instructions provides, in pertinent part, that

> [i]f the assignee is the signatory operator that employed the miner 'in the coal industry' AND it remains 'in business' within the meaning of the Coal Act; [¶] Then the assignee is responsible under the Coal Act, regardless of whether or not there is a 'successor' company.

Id. at 35.

65. The Secretary admits that, by letter dated January 30, 1995, SSA's Western Service Center notified plaintiff that, after reviewing the assignment of Samuel E. East and Josephine East, it had affirmed the original assignment decision assigning these Combined Fund beneficiaries to plaintiff pursuant to the Coal Act [hereinafter "East decision letter"]. The remaining allegations in this paragraph contain plaintiff's characterizations of this East decision letter to which no answer is required. To the extent an answer is deemed to be required, the Secretary denies the remaining allegations in this paragraph and respectfully refers the Court to this decision letter for a full and complete statement of its terms.

66. The Secretary admits that the East decision letter contains the language quoted in this paragraph and respectfully refers the Court to this decision letter for a full and complete statement of its terms.

67. The Secretary denies the allegations in this paragraph except to admit that the Supplemental Instructions contains the language quoted and respectfully refers the Court to this document for a full and complete statement of its terms.

68. The Secretary admits that the East decision letter contains the language quoted in the first sentence of this paragraph and respectfully refers the Court to this decision letter for a full and complete statement of its terms. The Secretary admits the allegations in the second sentence of this

paragraph. The Secretary further avers on information and belief that the Combined Fund has to date assessed plaintiff no health or death benefit premiums with respect to Mr. East.

69. The Secretary denies the allegations in this paragraph.

COUNT I

70. The Secretary herein incorporates by reference her responses to paragraphs 1-69 of this Answer.

71. The Secretary denies the allegations in this paragraph.

COUNT II

72. The Secretary herein incorporates by reference her responses to paragraphs 1-69 of this Answer.

73. The Secretary denies the allegations in this paragraph.

COUNT III

74. The Secretary herein incorporates by reference her responses to paragraphs 1-69 of this Answer.

75. The Secretary denies the allegations in this paragraph.

COUNT IV

76. The Secretary herein incorporates by reference her responses to paragraphs 1-69 of this Answer.

77. The Secretary denies the allegations in this paragraph.

PRAYER FOR RELIEF

The Secretary denies that plaintiff is entitled to the relief prayed for in this action, or to any relief whatsoever.

WHEREFORE, having fully answered, the Secretary prays this action be dismissed with prejudice, and for such other and further relief as the Court deems just and reasonable under the circumstances.

DATED: March 2, 1995

Respectfully submitted,

Frank W. Hunger
Assistant Attorney General

Donald K. Stern
United States Attorney

Suzzane Durell
Assistant U. S. Attorney

/s/ Brian G. Kennedy

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(Certificate of Service Omitted)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

(Caption Omitted)

ANSWER OF DEFENDANTS THE UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND AND ITS TRUSTEES TO FIRST AMENDED COMPLAINT

Defendants United Mine Workers of America Combined Benefit Fund (the "Combined Fund") and its Trustees (collectively, "Defendants"), answer the First Amended Complaint ("Complaint") as follows:

INTRODUCTION

The statute at issue in this case is the Coal Industry Retiree Health Benefit Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776, 3036 (the "Coal Act"). The Coal Act was enacted by Congress as part of the Energy Policy Act of 1992, and was signed into law by President Bush on October 24, 1992.

The Coal Act adds a new Subtitle J to the Internal Revenue Code of 1986. 106 Stat. 3037-56. The new Internal Revenue Code sections included within Subtitle J are numbered from 9701 through 9722. 26 U.S.C. §§ 9701-9722.

PRELIMINARY STATEMENT

1. The allegations in paragraph 1 of the Complaint are Plaintiff's characterization of this action and Plaintiff's description of the relief it seeks, neither of which require an answer. Defendants expressly state, however, that the Coal Act comports fully with the Due Process Clause and the Takings Clause of the Fifth Amendment and that Plaintiff is not entitled to any of the relief it seeks.

2. Defendants deny that the Coal Act transfers any contractual obligations. Defendants further deny that Eastern

Associated Coal Corp. ("EACC") has been relieved of any of its obligations under the Coal Act. Defendants otherwise lack sufficient knowledge or information to admit or deny the allegations in paragraph 2 of the Complaint.

JURISDICTION AND VENUE

3. The allegations in paragraph 3 of the Complaint are conclusions of law, which need not be admitted or denied.

4. The allegations in paragraph 4 of the Complaint are conclusions of law, which need not be admitted or denied.

PARTIES

5. Upon information and belief, Defendants admit the allegations in paragraph 5 of the Complaint.

6. Defendants admit that Donna E. Shalala is the Secretary of Health and Human Services ("the Secretary") and that she maintains an office in Washington, D.C. Defendants lack sufficient knowledge or information to form a belief as to where Ms. Shalala performs her official duties. The remaining allegations in paragraph 6 of the Complaint are conclusions of law, which need not be admitted or denied.

7. Defendants deny that Joseph P. Connors, Sr., and John Doe are Trustees of the Combined Fund (the "Combined Fund"). Defendants admit that Marty D. Hudson, Thomas O.S. Rand, Elliot A. Segal, Carlton R. Sickles, and Gail R. Wilensky are Trustees of the Combined Fund. (Mr. Segal's name is misspelled in the Complaint.) Defendants state that Michael H. Holland and William P. Hobgood are Trustees of the Combined Fund. Defendants further admit that the offices of the Trustees of the Combined Fund are located at 4455 Connecticut Avenue, N.W., Washington, D.C. 20008. The remaining allegations in paragraph 7 of the Complaint are conclusions of law, which need not be admitted or denied.

8. Defendants admit that the Combined Fund was established under the Coal Act as a multiemployer employee

welfare benefit plan under the Labor Management Relations Act of 1947, and the Employee Retirement Income Security Act of 1974 ("ERISA"). Defendants further admit that, in accordance with 26 U.S.C. § 9702(a)(2), the 1950 UMWA Benefit Plan and Trust and the 1974 UMWA Benefit Plan and Trust were merged into the Combined Fund as of February 1, 1993. Defendants further admit that the Combined Fund is located at 4455 Connecticut Avenue, N.W., Washington, D.C. 20008. Defendants further admit that, under the Coal Act, the Combined Fund sends to Assigned Operators notices of payments due. Assigned Operators in the Commonwealth of Massachusetts are included in the group to which such notices are sent. Defendants deny that the Combined Fund collects premiums or does business in the Commonwealth of Massachusetts. With respect to the purpose of the Combined Fund, Defendants rely upon the Coal Act to speak for itself. To the extent any other allegations in paragraph 8 of the Complaint are not expressly addressed in the foregoing, they are denied.

HISTORY OF THE UNITED MINE WORKERS OF AMERICA FUNDS

9. Upon information and belief, Defendants admit the allegations in paragraph 9 of the Complaint.

10. Upon information and belief, Defendants admit that the UMWA and certain coal mine operators negotiated the 1950 National Bituminous Coal Wage Agreement ("1950 NBCWA"). Defendants deny that the effective date of the 1950 NBCWA was March 4, 1950. Defendants admit, however, that the effective date of the 1950 NBCWA was March 5, 1950. Defendants admit the allegations in the second sentence of paragraph 10 of the Complaint. Defendants admit that the language quoted in the third sentence of paragraph 10 of the Complaint appears in the 1950 National Bituminous Coal Wage Agreement ("NBCWA"). Defendants rely upon the language of the 1950 NBCWA to speak for itself. To the extent any other allegations are not expressly addressed in the foregoing, they are denied.

11. Defendants admit that the language quoted in paragraph 11 of the Complaint appears in the 1950 NBCWA. Defendants rely upon the language of the 1950 NBCWA to speak for itself, and need not admit or deny Plaintiff's characterizations of that agreement.

12. Defendants admit that Plaintiff was a signatory to the 1950 NBCWA. Upon information and belief, Defendants admit the remaining allegations in paragraph 12 of the Complaint.

13. Defendants admit that the 1950 NBCWA was amended January 18, 1951 ("1951 Amendment"), effective February 1, 1951, and reflected the creation of the Bituminous Coal Operators' Association ("BCOA") as the collective bargaining representative of certain member operators and as primary negotiator with the UMWA for the 1951 Amendment and subsequent NBCWAs. Defendants otherwise rely upon the language of the 1951 Amendment to speak for itself, and need not admit or deny Plaintiff's characterizations of the 1951 Amendment. Defendants admit that BCOA was a signatory to the 1951 Amendment. Upon information and belief, Defendants admit that Plaintiff was a member of BCOA. To the extent any other allegations in paragraph 13 of the Complaint are not expressly addressed in the foregoing, they are denied.

14. Defendants admit that the 1950 NBCWA was amended through negotiations between the UMWA and BCOA, effective October 1, 1952 ("1952 Amendment"). Defendants rely upon the language of the 1952 Amendment to speak for itself, and need not admit or deny Plaintiff's characterizations of the 1952 Amendment. Defendants admit, however, that the 1952 Amendment provided for increased contributions to the 1950 W&R Fund from thirty cents ($0.30) to forty cents ($0.40) per ton. Defendants admit that BCOA was a signatory to the 1952 Amendment. Upon information and belief, Defendants admit that Plaintiff was a member of BCOA. To the extent any other

allegations in paragraph 14 of the Complaint are not expressly addressed in the foregoing, they are denied.

15. Defendants admit that the 1950 NBCWA was later amended on several occasions through negotiations between the UMWA and BCOA, and that some of those amendments were effective September 1, 1955 ("1955 Amendment"), October 1, 1956 ("1956 Amendment"), and December 1, 1958 ("1958 Amendment"). Defendants rely upon the language of the 1955 Amendment, the 1956 Amendment, and the 1958 Amendment to speak for itself, and need not admit or deny Plaintiff's characterization of those Amendments. Defendants admit that BCOA was a signatory to the 1955 Amendment, the 1956 Amendment, and the 1958 Amendment. Upon information and belief, Defendants admit that Plaintiff was a member of BCOA. To the extent any other allegations in paragraph 15 of the Complaint are not expressly addressed in the foregoing, they are denied.

16. Defendants admit that the 1950 NBCWA was later amended through negotiations between the UMWA and BCOA, effective April 2, 1964 ("1964 Amendment"). Defendants rely upon the language of the 1964 Amendment to speak for itself, and need not admit or deny Plaintiff's characterizations of the 1964 Amendment. Defendants admit, however, that the 1964 Amendment modified the provisions of the 1950 W&R Fund by adding an obligation to contribute eighty cents ($0.80) per ton for purchased or acquired coal. Upon information and belief, Defendants admit that Plaintiff was a signatory to the 1964 Amendment through its membership in BCOA. To the extent any other allegations in paragraph 16 of the Compliant are not expressly addressed in the foregoing, they are denied.

17. Defendants lack sufficient knowledge or information to admit or deny the allegations in paragraph 17 of the Complaint.

18. Upon information and belief, Defendants admit that EACC was a signatory to all NBCWAs after 1966, including the

1974, 1978, and 1988 NBCWAs. Defendants otherwise lack sufficient knowledge or information to admit or deny the allegations in paragraph 18 of the Complaint.

19. Defendants lack sufficient knowledge or information to admit or deny the allegations in paragraph 19 of the Complaint.

20. Defendants lack sufficient knowledge or information to admit or deny the allegations in paragraph 20 of the Complaint.

21. Defendants admit that the 1950 NBCWA was again amended through negotiations between the UMWA and BCOA, effective April 1, 1966 ("1966 Amendment"). The remaining allegations in paragraph 21 of the Complaint are conclusions of law, which need not be admitted or denied. Defendants rely upon the language of the 1966 Amendment to speak for itself.

22. Defendants lack sufficient knowledge or information to admit or deny the allegations in paragraph 22 of the Complaint.

23. Defendants admit that after 1966 the UMWA and BCOA negotiated new Amendments to the 1950 NBCWA, and negotiated new NBCWAs. The remaining allegations in paragraph 23 of the Complaint are conclusions of law, which need not be admitted or denied. Defendants rely upon the language of the NBCWAs to speak for itself.

24. Defendants admit that the UMWA and BCOA negotiated new NBCWAs in 1968 and 1971 ("1968 and 1971 NBCWAs"). Defendants rely upon the language of the 1968 and 1971 NBCWAs to speak for itself, and need not admit or deny Plaintiff's characterization of those agreements. The remaining allegations in paragraph 24 of the Complaint are conclusions of law, which need not be admitted or denied.

25. Defendants admit that the UMWA and BCOA negotiated a new NBCWA in 1974 ("1974 NBCWA"). Defendants further admit that, partly in response to the enactment of ERISA, the 1974 NBCWA replaced the 1950 W&R Fund with four new entities: the UMWA 1950 Pension

Plan and Trust ("1950 Pension Trust"), the UMWA 1974 Pension Plan and Trust ("1974 Pension Trust"), the UMWA 1950 Benefit Plan and Trust ("1950 Benefit Trust"), and the UMWA 1974 Benefit Plan and Trust ("1974 Benefit Trust"). Defendants further admit that the 1950 Benefit Trust provided health and other benefits to coal miners who retired before January 1, 1976, and that the 1974 Benefit Trust provided health and other benefits to coal miners who retired on or after January 1, 1976. Defendants otherwise rely upon the language of the 1974 NBCWA to speak for itself, and need not admit or deny Plaintiff's characterization of that agreement.

26. Defendants deny Plaintiff's characterization of the 1974 NBCWA as set forth in paragraph 26 of the Complaint, and rely upon the language of the 1974 NBCWA to speak for itself.

27. Defendants deny Plaintiff's characterizations of the 1971 and 1974 NBCWAs as set forth in paragraph 27 of the Complaint, and rely upon the language of those agreements to speak for itself. Defendants admit, however, that the language quoted in the second sentence of paragraph 27 of the Complaint appears in the 1971 NBCWA, and the language quoted in the third sentence of paragraph 27 of the Complaint appears in the 1974 NBCWA. The remaining allegations in paragraph 27 of the Complaint are conclusions of law, which need not be admitted or denied.

28. Defendants admit that the UMWA and BCOA negotiated a new NBCWA in 1978 ("1978 NBCWA"). Defendants further admit that the 1978 NBCWA generally required that health benefits for miners who retired on or after January 1, 1976, be provided by individual employer plans maintained by signatory operators (rather than by the 1974 Benefit Trust), and that the 1974 Benefit Trust be retained exclusively as an "orphan" plan, to provide benefits to miners who retired on or after January 1, 1976, whose former employers were "no longer in business." Defendants otherwise rely upon the language of the 1978 NBCWA to speak for itself,

and need not admit or deny Plaintiff's characterization of that agreement.

29. Defendants admit that the quoted language in paragraph 29 of the Complaint appears in the 1978 NBCWA and has sometimes been referred to as the "guarantee" clause. Defendants otherwise rely upon the language of the 1978 NBCWA to speak for itself.

30. The allegations in paragraph 30 of the Complaint are conclusions of law, which need not be admitted or denied. By way of further answer, Defendants deny Plaintiff's characterizations of the NBCWAs and trust documents, and rely upon the language of those agreements and documents to speak for itself.

31. Defendants admit that the language quoted in paragraph 31 of the Complaint appears in the trust documents prepared for the 1950 and 1974 Benefit Trusts in 1978, that this language sometimes has been referred to as the "evergreen" clause, that the evergreen clause was negotiated during the negotiations leading to the 1978 NBCWA, and that the trust documents for the 1950 and 1974 Benefit Trusts were incorporated by reference into the 1978 NBCWA. Defendants further admit that the evergreen clause has been interpreted to require signatory employers to continue contributing to the 1950 and 1974 Benefit Trusts in accordance with the 1978 NBCWA and any successor NBCWAs for as long as such agreements require contributions to the Trusts. Defendants otherwise deny Plaintiff's characterizations of the trust documents, and rely upon the language of those documents to speak for itself. To the extent any other allegations in paragraph 31 of the Complaint are not expressly addressed in the foregoing, they are denied.

32. Defendants rely upon the language of the 1978 NBCWA to speak for itself, and need not admit or deny Plaintiff's characterization of that agreement in paragraph 32 of the Complaint.

33. Defendants admit that successive NBCWAs were negotiated in 1981, 1984, and 1988 between the UMWA and BCOA. Defendants deny Plaintiff's characterizations of those NBCWAs, and rely upon the language of those agreements to speak for itself. Defendants admit, however, that contribution rates for the UMWA Pension and Benefit Trusts were changed from time to time under those NBCWAs, and that some of those changes were increases.

34. Defendants rely upon the language of the 1988 NBCWA to speak for itself, and need not admit or deny Plaintiff's characterization of that agreement. Defendants admit, however, that the 1988 NBCWA provides for withdrawal liability in several circumstances specified in the agreement, including (but not limited to) situations in which a signatory employer ceases, for whatever reason, to have an obligation to contribute to the 1950 or 1974 Benefit Trusts.

35. The allegations in the first sentence of paragraph 35 of the Complaint are conclusions of law, which need not be admitted or denied. To the extent the first sentence of paragraph 35 incorporates the allegations in paragraphs 27-36 of the Complaint (or paragraphs 25-34, which appear to be the paragraphs to which Plaintiff intended to refer), Defendants incorporate here by reference their responses in paragraphs 27-36 (or paragraphs 25-34) of this Answer. Defendants deny the remaining allegations in paragraph 35 of the Complaint.

36. Defendants deny the allegations in paragraph 36 of the Complaint.

THE 1992 COAL ACT

37. Defendants admit that on October 24, 1992, President Bush signed the Coal Act into law as part of the Energy Policy Act of 1992. The remaining allegations in paragraph 37 of the Complaint are conclusions of law, which need not be admitted or denied. Defendants rely upon the Coal Act to speak for itself.

38. The allegations in paragraph 38 of the Complaint are conclusions of law, which need not be admitted or denied. Defendants deny Plaintiff's characterization of the Coal Act, and rely upon the language of the Coal Act to speak for itself.

39. Defendants deny the allegations in paragraph 39 of the Complaint.

40. Defendants deny Plaintiff's characterization of the Coal Act in paragraph 40 of the Complaint, and rely upon the language of the Coal Act to speak for itself.

41. Defendants admit that the Combined Fund was created in accordance with Section 9702 of the Coal Act, 26 U.S.C. § 9702. Defendants otherwise deny Plaintiff's characterization of the Coal Act in paragraph 41 of the Complaint, and rely upon the language of the Coal Act to speak for itself.

42. Defendants deny Plaintiff's characterization of the Coal Act in paragraph 42 of the Complaint, and rely upon the language of the Coal Act to speak for itself. Defendants state, however, that, based on the Secretary's assignment of beneficiaries, the Combined Fund has assessed Plaintiff an annual premium of $1,841,773.32 for the first plan year, which is an eight-month "year" beginning February 1, 1993, and ending September 30, 1993, and $3,211,536.90 for the second plan year, beginning October 1, 1993, and ending September 30, 1994. Defendants further state that these premiums for the Combined Fund's first two plan years were to be paid in twelve equal installments, the first of which was due on November 8, 1993, and the remainder of which were due on the 25th of each month from November 1993 through September 1994. Defendants further state that no portion of these premiums is attributable to unassigned beneficiaries.

43. The allegations in paragraph 43 of the Complaint, including footnote 1, are conclusions of law, which need not be admitted or denied. Defendants deny Plaintiff's characterization

of the Coal Act, and rely upon the language of the Coal Act to speak for itself.

44. Upon information and belief, Defendants admit the allegations in paragraph 44 of the Complaint.

45. Defendants admit that Plaintiff has been assigned liability under the Coal Act for certain retired miners, surviving spouses, and dependents. Defendants further admit that the Combined Fund has sent Plaintiff a memorandum, dated October 22, 1993, assessing premiums for 1,494 beneficiaries assigned to Plaintiff for the Combined Fund's first plan year and 1,430 beneficiaries assigned to Plaintiff for the Combined Fund's second plan year. Upon information and belief, Defendants further admit that many (if not all) of the identified miners were identified as having last worked for Plaintiff prior to 1966. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in paragraph 45 of the Complaint.

46. Upon information and belief, Defendants admit that in the case of some miners (and other beneficiaries related to miners), Plaintiff was notified that it was the operator that employed the miner under a UMWA agreement for the longest period of time before 1978. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in paragraph 46 of the Complaint.

47. The allegations in the first sentence of paragraph 47 of the Complaint contain conclusions of law, which need not be admitted or denied. Upon information and belief, Defendants admit that in the case of some miners (and other beneficiaries related to miners), Plaintiff was notified that it was the last operator to employ the miner under a UMWA agreement for at least two years, and that it was a signatory to a 1978 or later agreement with the UMWA. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in paragraph 47 of the Complaint.

48. The allegations in the first sentence of paragraph 48 of the Complaint contain conclusions of law, which need not be admitted or denied. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations of paragraph 48 of the Complaint.

49. Defendants deny Plaintiff's characterization of the Coal Act and Notices of Assignment in paragraph 49 of the Complaint, and rely upon the language of the Coal Act and the Notices to speak for itself.

50. Defendants deny that Plaintiff was notified that it would be required to make a premium payment in the month of October 1993. Defendants further deny that the October 22, 1993 memorandum referred to in paragraph 50 of the Complaint was from the Trustees of the Combined Fund. Defendants state that the memorandum was from Donald E. Pierce, Jr., who was, at the time of the memorandum, Executive Director, UMWA Health & Retirement Funds. Defendants admit that the memorandum notified Plaintiff of its obligation to make twelve monthly premium payments, in the amount of $421,109.18 each, beginning on November 8, 1993 and continuing thereafter on the 25th of each month from November 1993 through September 1994. Defendants state that these twelve monthly payments comprised Eastern's premium obligations for the Combined Fund's first two plan years, as set forth in paragraph 42 of this Answer. To the extent any remaining allegations in paragraph 50 of the Complaint are not addressed by the foregoing, they are denied.

51. Defendants admit that the October 22, 1993 memorandum from Mr. Pierce did not assess any premium for death benefits or for unassigned beneficiaries' health benefits. Defendants further admit that Congress provided in the Coal Act for certain transfers of funds from other sources to the Combined Fund, that these transfers are to occur during the years from February 1, 1993 through September 30, 2004, and that the first two such transfers – of $70,000,000 each from the 1950 Pension Trust – occurred on February 1, 1993, and

October 1, 1993. Defendants further admit that these transfers were sufficient to eliminate any need for any death benefit premium or unassigned beneficiaries' premium during the Combined Fund's first two plan years. To the extent any other allegations in the first sentence of paragraph 51 of the Complaint are not expressly addressed in the foregoing, they are denied. The allegations in the second sentence of paragraph 51 of the Complaint consist of speculation or predictions about future events, which Defendants need not admit or deny. To the extent that any answer is required, Defendants, upon information and belief, deny the allegations in the second sentence of paragraph 51 of the Complaint.

52. Defendants lack sufficient knowledge or information to admit or deny the allegations in paragraph 52 of the Complaint.

53. Defendants lack sufficient knowledge or information to admit or deny the allegations in the first and last sentences of paragraph 53 of the Complaint. Defendants deny Plaintiff's characterization of the Coal Act in the second sentence of paragraph 53 of the Complaint, and rely upon the language of the Coal Act to speak for itself. Defendants state, however, that Plaintiff is an assigned operator as that term is defined in the Coal Act and is responsible for payment of annual premiums to the Combined Fund.

54. Defendants lack sufficient knowledge or information to admit or deny the allegations in paragraph 54 of the Complaint.

55. Defendants admit that the quoted language in paragraph 55 of the Complaint appears in Notices of Assignment issued by SSA to Plaintiff. Defendants otherwise do not admit or deny Plaintiff's characterization of the Notices, but rely on the language of the Notices to speak for itself.

56. Defendants admit that the quoted language in paragraph 56 of the Complaint appears in Notices of Assignment issued by SSA to Plaintiff. Defendants otherwise do not admit or deny Plaintiff's characterization of the Notices, but rely on the language of the Notices to speak for itself.

57. Defendants lack sufficient knowledge or information to admit or deny the allegations in paragraph 57 of the Complaint.

58. Defendants admit that Transmittal No. 9 (SSA Pub. No. 68-0101402) (January 1994) is an SSA document that concerns SSA's review of assignment decisions under the Coal Act. Defendants do not admit or deny Plaintiff's characterization of Transmittal No. 9, but rely on the language of the document to speak for itself. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in paragraph 58 of the Complaint.

59. Defendants admit that on April 27, 1994, Plaintiff, through its counsel, submitted a letter to SSA. Defendants do not admit or deny Plaintiff's characterization of the letter, but rely on the language of the letter to speak for itself.

60. Defendants lack sufficient knowledge or information to admit or deny the allegations in paragraph 60 of the Complaint.

61. Defendants admit that on June 17, 1994, Eastern, through its counsel, submitted a letter and memorandum to SSA. Defendants do not admit or deny Plaintiff's characterization of the letter and memorandum, but rely on the language of the documents to speak for itself. The allegations in the third sentence in paragraph 61 of the Complaint are conclusions of law which need not be admitted or denied. To the extent that an answer is required, Defendants lack sufficient knowledge or information to admit or deny the allegations in the third sentence of paragraph 61.

62. Defendants lack sufficient knowledge or information to admit or deny the allegations in paragraph 62 of the Complaint.

63. Defendants admit that on January 18, 1995 SSA sent a letter to Eastern's counsel responding to various letters previously sent by Eastern's counsel to SSA. Defendants do not admit or deny Plaintiff's characterization of SSA's letter, but rely on the language of the letter to speak for itself.

64. Defendants admit that SSA has issued a document entitled "Supplemental Coal Act Review Instructions #3," dated December 1994. Defendants do not admit or deny Plaintiff's characterization of that document, but rely on the language of the document to speak for itself. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in paragraph 64 of the Complaint.

65. Defendants admit that on January 30, 1995, SSA sent a letter to Eastern, in care of its counsel, denying Eastern's request that two Combined Fund beneficiaries, Samuel E. East and Josephine East, be reassigned to EACC. Defendants otherwise do not admit or deny Plaintiff's characterization of SSA's letter, but rely on the language of the letter to speak for itself. Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in paragraph 65 of the Complaint.

66. Defendants admit that, apart from minor typographical errors, the language quoted in paragraph 66 of the Complaint appears in the January 30, 1995 letter from SSA to Eastern. Defendants do not admit or deny Plaintiff's characterization of the letter, but rely on the language of the letter to speak for itself.

67. Defendants admit that the language quoted in paragraph 67 of the Complaint appears on page 35 of SSA's Supplemental Coal Act Review Instructions #3 (December 1994). Defendants lack sufficient knowledge or information to admit or deny the remaining allegations in paragraph 67 of the Complaint.

68. Defendants admit that, apart from minor typographical errors, the language quoted in paragraph 68 of the Complaint appears in SSA's letter of January 30, 1995. Defendants do not admit or deny Plaintiff's characterization of SSA's letter, but rely on the language of the letter to speak for itself. Upon information and belief, Defendants admit the allegations in the second sentence of paragraph 68 of the Complaint.

69. The allegations in paragraph 69 of the Complaint are conclusions of law, which need not be admitted or denied. By way of further answer, Defendants deny Plaintiff's characterizations of the Coal Act, and rely upon the language of the Coal Act to speak for itself.

COUNT I

70. Defendants restate and incorporate by reference their responses to the allegations in paragraphs 1-69 of the Complaint.

71. The allegations in paragraph 71 of the Complaint are conclusions of law, which need not be admitted or denied, and which in any event are not addressed to Defendants.

COUNT II

72. Defendants restate and incorporate by reference their responses to the allegations in paragraphs 1-69 of the Complaint.

73. The allegations in paragraph 73 of the Complaint are conclusions of law, which need not be admitted or denied, and which in any event are not addressed to Defendants.

COUNT III

74. Defendants restate and incorporate by reference their responses to the allegations in paragraphs 1-69 of the Complaint.

75. The allegations in paragraph 75 of the Compliant are conclusions of law, which need not be admitted or denied. Defendants deny, however, that the Coal Act violates the Due Process Clause of the Fifth Amendment, and state that the Coal Act comports fully with the Constitution of the United States.

COUNT IV

76. Defendants restate and incorporate by reference their responses to the allegations in paragraphs 1-69 of the Complaint.

77. The allegations in paragraph 77 of the Complaint are conclusions of law, which need not be admitted or denied. Defendants deny, however, that the Coal Act violates the

Takings Clause of the Fifth Amendment, and state that the Coal Act comports fully with the Constitution of the United States.

PRAYER FOR RELIEF

78. Defendants deny that Plaintiff is entitled to any relief based on Counts III and IV of the Complaint. Defendants further deny that Plaintiff is entitled to any relief whatever against Defendants.

79. Defendants deny any allegations of the Complaint that are not admitted or expressly addressed above.

AFFIRMATIVE DEFENSES

The Complaint, to the extent it seeks relief against Defendants, fails to state a claim upon which relief can be granted.

WHEREFORE, Defendants request that Plaintiff's claims against Defendants be dismissed with prejudice, and that Defendants be awarded their fees and costs, including reasonable attorneys' fees, together with such further relief as the Court may determine is proper and just.

COUNTERCLAIM

The United Mine Workers of America Combined Benefit Fund ("Combined Fund") and its Trustees allege their counterclaim against Plaintiff Eastern Enterprises as follows:

NATURE OF THE ACTION

1. This is an action for a declaratory judgment that the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act"), 26 U.S.C. §§ 9701 et seq. which was signed into law by President Bush on October 24, 1992, does not violate the Due Process or Takings Clauses of the Fifth Amendment by requiring companies that signed one or more previous National Bituminous Coal Wage Agreements ("NBCWAs") but did not sign the 1988 NBCWA to pay Annual Premiums to the United

Mine Workers of America Combined Benefit Fund (the "Combined Fund").

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1337, and 28 U.S.C. § 2201.

3. Venue is proper in the District of Massachusetts pursuant to 28 U.S.C. § 1391(b) and (c).

PARTIES

4. Counterclaim Plaintiffs are the Combined Fund and its seven Trustees.

5. Counterclaim Defendant is Eastern Enterprises ("Eastern").

FACTS

The Financial Crisis That Threatened The Collectively-Bargained Trust Funds Providing Health Benefits To Retired Miners

6. For more than 40 years, the United Mine Workers of America ("UMWA") and the Bituminous Coal Operators' Association ("BCOA") have negotiated and signed a series of collective bargaining agreements known as NBCWAs. Each NBCWA to date has contained provisions requiring signatory coal operators to provide health benefits to retired miners and their dependents. These benefits were provided through trust funds financed by employers signing the NBCWAs or so-called "me too" agreements. Eastern signed the 1950 NBCWA and several amendments thereto.

7. From 1950 to 1974 the benefits mandated by the NBCWAs were provided through a multiemployer welfare plan known as the United Mine Workers of America Welfare and Retirement Fund. Subsequently, from 1974 to 1993, the NBCWA-mandated retiree health benefits were provided through the UMWA 1950 Benefit Plan and Trust ("1950 Benefit

Fund") and the UMWA 1974 Benefit Plan and Trust ("1974 Benefit Fund"). The 1950 Benefit Fund generally provided health benefits to eligible UMWA miners who retired before 1976, and the 1974 Benefit Fund generally provided health benefits to eligible post-1975 UMWA retirees whose last employer had gone out of business.

8. Eastern's retirees received health benefits from the UMWA Welfare and Retirement Fund until 1974 and thereafter, until February 1, 1993, from the 1950 Benefit Fund or the 1974 Benefit Fund. From February 1, 1993 forward, Eastern's retirees that previously received benefits from the 1950 Benefit Fund or the 1974 Benefit Fund have been receiving and will continue to receive health benefits from the Combined Fund.

9. Upon information and belief, Eastern ceased contributing to the UMWA Welfare and Retirement Fund in or around 1966, and Eastern never contributed to the 1950 Benefit Fund or the 1974 Benefit Fund. Yet for many years, from in or around 1966 to 1993, Eastern's retirees received benefits from the UMWA Welfare and Retirement Fund and from the 1950 Benefit Fund or the 1974 Benefit Fund. These benefits were paid for by other employers.

10. During the last decade, the financial stability of the 1950 and 1974 Benefit Funds was cast in serious doubt. The problems became particularly acute during the five-year term of the 1988 NBCWA. The crisis was attributable to several factors. One of the most important was that numerous coal companies that had signed the 1978 NBCWA (and, frequently, subsequent NBCWAs as well) attempted in the 1980s to avoid responsibility for contributing to the costs of health coverage for UMWA retirees and their dependents. These companies terminated their participation in the 1950 and 1974 Benefit Funds and "dumped" the retirees that they were then covering through individual employer plans into the 1974 Benefit Fund.

The Coal Act - Congress' Response To The Financial Crisis

11. In response to the financial difficulties that threatened the 1950 and 1974 Benefit Funds, Congress enacted the Coal Act as part of the Energy Policy Act of 1992, and President Bush signed the Coal Act into law on October 24, 1992.

12. In enacting the Coal Act, Congress found that:

(1) the production, transportation, and use of coal substantially affects interstate and foreign commerce and the national public interest; and

(2) in order to secure stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

Section 19142(a), 106 Stat. 3037.

13. Among other things, the Coal Act seeks to ensure the continuation of health benefits to tens of thousands of retired coal miners and their dependents by spreading the cost of such health benefits broadly among all employers that voluntarily participated in the UMWA Welfare and Retirement Fund or the 1950 and 1974 Benefit Funds, the collectively-bargained multiemployer arrangements for the provision of health care to UMWA retirees in the coal industry. The Coal Act achieves its objective by requiring that "those companies which employed the retirees in question, and thereby benefitted from their services, will be assigned responsibility for providing the health care benefits promised in their various collective bargaining agreements." 138 Cong. Rec. S17603 (daily ed. Oct. 8, 1992). Additionally, the Coal Act obligates employers who participated in the UMWA Welfare and Retirement Fund or the 1950 and 1974 Benefit Funds to shoulder a proportionate share of providing health coverage to "orphan retirees" – i.e., those

retirees whose former employers are no longer in business. 26 U.S.C. § 9704(d).

14. The Coal Act provides for the establishment of the Combined Fund as a new private entity. 26 U.S.C. § 9702. The 1950 and 1974 Benefit Funds were both merged into the Combined Fund effective February 1, 1993. 26 U.S.C. § 9702(a)(2). By statute, the Combined Fund provides health benefits to coal industry retirees who, as of July 20, 1992, were eligible to receive, and were receiving, benefits from the 1950 and 1974 Benefit Funds. 26 U.S.C. § 9703(a), (b)(1), (e), and (f).

15. Consistent with Congress' express intent that responsibility for financing the cost of providing health benefits to eligible retirees should be placed on "those companies which employed [the retirees] and thereby benefitted from their service," 138 Cong. Rec. at S17603, the Coal Act requires each "Assigned Operator" to make payments to the Combined Fund. An "Assigned Operator" is an employer that is or was signatory to an NBCWA and to which the Secretary of Health and Human Services assigns retirees covered by the Combined Fund under 26 U.S.C. § 9706.

16. Each Assigned Operator is obligated by the Coal Act to pay an "Annual Premium" to the Combined Fund. The Annual Premium consists of three parts: 1) a health premium for the Assigned Operator's "assigned beneficiaries;" 2) an actuarially-determined death benefit premium; and 3) an "unassigned beneficiaries premium." 26 U.S.C. § 9704(a).

17. The unassigned beneficiaries premium is designed to cover each Assigned Operator's pro rata share of health benefits allocable to retirees who cannot be assigned to an Assigned Operator. Congress required the payment of an unassigned beneficiaries premium because:

> [a]s a practical matter, not all beneficiaries can be assigned to a specific last signatory operator . . . . This is because in some instances, none of those persons remain in business, even as defined to include non-mining related businesses. Thus, provisions are made for unassigned beneficiary premiums. In each plan year each assigned operator will pay a premium earmarked to cover the health costs of these unassigned beneficiaries.

138 Cong. Rec. S17605 (daily ed. Oct. 8, 1992). The Coal Act provides detailed rules for assigning beneficiaries in order to keep to an "absolute minimum" the number of unassigned beneficiaries. Id. In addition, Congress provided subsidies in the Coal Act to offset the unassigned beneficiaries premium. 26 U.S.C. § 9705(a) (authorizing three annual transfers of $70 million from the UMWA 1950 Pension Plan to the Combined Fund); 26 U.S.C. § 9705(b) (authorizing annual transfers of up to $70 million (or more) from the Abandoned Mine Reclamation Fund to the Combined Fund starting October 1, 1995, and continuing through the plan year ending September 30, 2004).

CAUSE OF ACTION

18. Counterclaim Plaintiffs reallege the allegations contained in Paragraphs 1 through 17 of this Complaint as if fully set forth herein.

19. There exists an actual controversy between the Counterclaim Plaintiffs and the Counterclaim Defendant regarding the constitutionality of the Coal Act, in which Congress mandates that Counterclaim Defendant pay Annual Premiums to the Combined Fund. In essence, Counterclaim Defendant claims that the Coal Act is unconstitutional and that it is not bound to make any Annual Premium payments to the Combined Fund. If Counterclaim Defendant's position were accepted, Congress would be effectively precluded from legislating to protect the national interest. Counterclaim Plaintiffs believe, and their position has been adopted in Barrick Gold Exploration, Inc. v. Hudson, 1995 U.S. App. LEXIS 3621 (6th Cir., February 24, 1995), aff'g 823 F. Supp. 1395 (S.D. Ohio 1993); LTV Steel Corp., Inc. v. Shalala, 163 B.R. 955 (S.D.N.Y. 1993), appeal pending, No. 94-6024 (2d Cir. argued December 1,

1994); and Blue Diamond Coal Company v. Shalala, 1994 U.S. Dist. LEXIS 16374 (E.D. Tenn. Nov. 11, 1994), appeal pending, No. 94-6539 (6th Cir.), that the Coal Act fully comports with the requirements of the Due Process and Takings Clauses of the Fifth Amendment and does not effect a "taking" of private property within the meaning of the Fifth Amendment.

20. There exists a need for a prompt declaratory judgment concerning the constitutionality of the Coal Act's provisions governing Assigned Operators like Eastern. Unless challenges to the constitutionality of the Coal Act are expeditiously addressed through declaratory judgment actions, Counterclaim Plaintiffs' ability to meet the Combined Fund beneficiaries' legitimate health care needs may be adversely affected, its collection of Annual Premiums may be impeded, and projected litigation expenses will likely increase, consuming money otherwise available to pay for retiree health care costs.

PRAYER FOR RELIEF

WHEREFORE, Counterclaim Plaintiffs request that this Court enter a judgment: (a) declaring that the Coal Act as applied to Counterclaim Defendant does not effect a "taking" of private property and does not violate the Due Process or Takings Clauses of the Fifth Amendment; and (b) granting Counterclaim Plaintiffs such other and further relief as the Court may deem just and proper, including an award of attorneys' fees and costs.

Respectfully Submitted,

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March 2, 1995

(Certificate of Service Omitted)

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

(Caption Omitted)

CORRECTED STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE ISSUE

Pursuant to Rule 56.1 of the Local Rules of the United States District Court for the District of Massachusetts, Eastern Enterprises ("Eastern") submits this Statement of Material Facts as to Which There is No Genuine Issue in conjunction with its Motion for Summary Judgment and Memorandum in support thereof.

Eastern Associated Coal Corp. Acquired Eastern's Coal Operations

1. Eastern Gas and Fuel Associates (known today as Eastern Enterprises) was organized in 1929 as a so-called Massachusetts business trust. For many years, Eastern owned Boston Gas Company (a retail gas company), among other companies, and maintained coal operations – primarily in West Virginia and Pennsylvania – through its Coal Division. Tab 4, Subtab 1 (Philips Aff.), ¶ 4 [RA 201]. [1]

2. In 1963, Eastern created a wholly-owned subsidiary, Eastern Associated Coal Corp. ("EACC"), to take over the operations of its Coal Division. The creation of EACC was consistent with Eastern's view that each operation in a diversified entity such as Eastern should be an independent

[1] Reference to the supporting materials appended to this Statement of Facts appear herein as "Tab _"; references to documents within Tab 4 appear herein as "Tab 4, Subtab _ (Document name)," where "Subtab" refers to the small tab that is part of the document behind Tab 4. [**Petitioner's Note**: supplementary citations have been added to this Statement of Facts to allow the Court to cross-reference the materials to the Record Appendix prepared for the First Circuit. Such citations appear as "[RA _]".]]

corporation, responsible for its own profits, for obtaining its own financing, and for handling its own liabilities, and should hold itself out to the world as a separate operation. Id. at ¶ 5 [RA 201-02].

3. Although EACC was incorporated in 1963, the process of transferring all of Eastern's coal operations to EACC required several years to complete. Id. at ¶ 8 [RA 203]. In particular, it took time to complete the transfer of Eastern's various leases (including obtaining lessor approvals of the transfers), retirement funds and the other aspects of the coal operation. Recognizing that EACC would gradually acquire the Coal Division's operations, Eastern caused EACC to enter into a contract on July 18, 1963 defining the relationship between EACC and the Coal Division during the interim period. The contract provided, among other things, that the sales organization and sales agreements of the Coal Division would be transferred to EACC upon EACC's assumption of the obligations and liabilities of the sales organization, and that mining operations would eventually be transferred to EACC upon the assumption of liabilities and obligations relating to such mining operations. Id. at ¶ 19 [RA 206]; Tab 4, Subtab 5 (Romeo Aff.)., Ex C [RA 259]. In the aftermath of this agreement, Eastern dissolved the Coal Committee that it had utilized for many years to oversee the management of the Coal Division. Tab 4, Subtab 1 (Philips Aff.), ¶ 7 [202-03].

4. As EACC's 1967 Annual Report on Form 10-K described the process, "[s]tarting in 1963, transfers were made to EACC of the coal properties and mining activities of the Coal Division of Eastern in exchange for EACC's common stock and as a contribution to capital... " 1967 Annual Report of Eastern Associated Coal Corp. ("EACC 10-K") Tab 4, Subtab 5 (Romeo Aff.), Ex. G) at p. F-7(1) [RA 306].

5. By January 1, 1966, all assets of Eastern's Coal Division had been transferred to EACC – with the exception of a few leases on which the lessor would not agree to an assignment – and the Coal Division ceased to exist. All coal-related liabilities,

known or unknown, likewise were the responsibility of EACC. As Eastern's 1966 tax return explained:

> During 1966 Eastern Gas and Fuel Associates transferred to Eastern Associated Coal Corp. ... all of its coal properties and related assets ... In addition, Eastern Associated Coal Corp. assumed all the liabilities of Eastern Gas and Fuel Associates arising out of the coal mining and coal marketing operations of Eastern Gas and Fuel Associates.

Tab 4, Subtab 5 (Romeo Aff.), Ex. E [RA 263].

6. Following the transfer of assets and liabilities, EACC repeatedly represented that it was the "successor" to the Eastern Coal Division. In 1967, for example, EACC filed a prospectus with the Securities and Exchange Commission ("SEC") in connection with a public offering of debentures emphasizing that "Eastern Associated Coal Corp. is a wholly-owned subsidiary of Eastern Gas and Fuel Associates ("Eastern") of Boston, Massachusetts, and was incorporated on March 27, 1963 under the laws of West Virginia to be the successor to the Coal Division of Eastern." Prospectus at 2 (Tab 4, Subtab 5 (Romeo Aff.), Ex. F) [RA 265]. The prospectus also stated, at page 14, "[i]n March of 1963, Eastern organized [EACC] as a wholly-owned subsidiary under the laws of the State of West Virginia to be the successor to Eastern's Coal Division. On ... January 1, 1966, Eastern transferred all of its remaining coal properties to [EACC] in exchange for common stock of [EACC]." Id. at 14 [RA 277].

7. EACC made the same point in its Form 10-Ks filed each year with the SEC. Its 1970, 1971, 1972, 1977 and 1978 10-Ks noted that EACC was incorporated "to be the successor to the Coal Division of its parent Eastern Gas and Fuel Associates." 1970 EACC 10-K at 1; 1971 EACC 10-K at 1; 1972 EACC 10-K at 1; 1977 EACC 10-K at 1; and 1978 EACC 10-K at 1. (Tab 4, Subtab 5 (Romeo Aff.), Exs. I-M) [RA 339, 375, 415, 464, 518].

8. Moreover, EACC emphasized in its Form 10-Ks that EACC's operations were one and the same as the operations of Eastern's former Coal Division. In both 1967 and 1968, EACC's annual reports emphasized that "[t]he results of operations of EACC for the year 1967 include all coal operations and mining activities previously conducted by the Coal Division of Eastern." 1967 EACC 10-K at F-7 (Tab 4, Subtab 5 (Romeo Aff.), Ex. G) [RA 306]. See also 1968 EACC 10-K at F-6 (same language) (Tab 4, Subtab 5 (Romeo Aff.), Ex. H) [RA 329]. Similarly, in a marketing brochure published by EACC shortly after its creation, EACC identified itself as "[f]ormerly [the] Coal Division of Eastern Gas and Fuel Associates" and emphasized that it was "a new company ... formed to continue the extensive operations of the Coal Division." Tab 4, Subtab 5 (Romeo Aff.), Ex. N [RA 573, 574].

EACC Continued The Operations Of Eastern's Coal Division

9. EACC continued virtually every aspect of the operations of the former Coal Division. Thus, utilizing the same management as the Coal Division, EACC continued – without a suspension in operations – to operate the same mines and to employ the same miners as Eastern's Coal Division. In the process, EACC operated the same machinery; maintained the same company housing and company stores; operated the same summer camp for the children and grandchildren of miners and retirees, Camp Lightfoot, that had been operated by Eastern's Coal Division, and assumed the banking relationships of the former Coal Division. Tab 4, Subtab 1 (Philips Aff.), ¶¶ 9, 10-11 [RA 203-04]; Tab 4, Subtab 3 (Weinig Aff.), ¶¶ 5-8 [RA 214-16]; Tab 4, Subtab 2 (Freeman Aff.), ¶¶ 3-4 [RA 209].

10. Documents produced by EACC to Eastern regarding the beneficiaries assigned to Eastern under the Coal Act vividly illustrate EACC's successorship status. At least 23 of the miners who have themselves been assigned to Eastern (or whose dependents or widows have been assigned to Eastern) received

letters of reference from EACC attesting to the fact that the miners worked for "this company" (i.e., EACC) during years prior to 1963 (the year EACC was incorporated). Tab 4, Subtab 4 (McVey Aff.), ¶¶ 17-18, Exs. C, D [RA 223-24, 236-37].

11. Similarly, EACC tendered "Field Separation Notices" to at least 105 miners which acknowledged their length of continuing service to the company, including years prior to the creation of EACC. Tab 4, Subtab 4 (McVey Aff.), ¶¶ 13-16, Exs. A, B [RA 222-23, 227-35]. (emphasis added). Finally, in connection with employment applications, five other miners stated that EACC had been a previous employer during periods several years before EACC's creation, thus illustrating the miners' understanding that EACC effectively had become the Coal Division. Tab 4, Subtab 4 (McVey Aff.), ¶ 19 [RA 224].

EACC Assumed Eastern's Coal-Related Liabilities

12. EACC fulfilled all obligations of the former Coal Division as they arose in the years after 1966. Tab 4, Subtab 2 (Freeman Aff.), ¶¶ 4-9 [RA 209-12]; Tab 4, Subtab 4 (McVey Aff.), ¶¶ 4-5 [RA 219]; Tab 4, Subtab 1 (Philips Aff.), ¶¶ 9-19 [RA 203-06]; Tab 4, Subtab 3 (Weinig Aff.), ¶¶ 5-8 [RA 214-16]. For example, federal and state Black Lung legislation permitted a miner to file a claim against his last employer, who (if the claim was valid) was obligated to pay for a portion of his benefits. Tab 4, Subtab 4 (McVey Aff.), ¶ 5 [RA 219]. EACC processed and (when appropriate) paid the Black Lung claims of all the miners who had retired under Eastern's Coal Division. Tab 4, Subtab 2 (Freeman Aff.), ¶ 7 [RA 210-11]; Tab 4, Subtab 4 (McVey Aff.), ¶¶ 5-8 [RA 219-20]. In fact, Jimmy D. McVey, EACC's Manager of Compensation and Benefits from 1974-87, had an internal accounting system that allocated the Black Lung claims to the appropriate mining facility regardless whether the facility was operated currently by EACC or had been closed by Eastern prior to the transfer to EACC. Id. at ¶ 7 [RA 220]. Eastern's federal Black Lung liability was unknown in 1963-66, when the transfers were made to EACC, but EACC paid for

that liability because it had taken on all of Eastern's known and unknown coal-related liabilities. Tab 4, Subtab 2 (Freeman Aff.), ¶ 7 [RA 210-11]; Tab 4, Subtab 3 (Weinig Aff.), ¶ 7 [RA 215].

13. Similarly, EACC took on Eastern's obligations to retirees from the Coal Division. For the Coal Division personnel who retired before the creation of Eastern's pension plan, EACC's Board continued Eastern's practice of voting monthly allowances to those persons, and EACC paid them. Tab 4, Subtab 1 (Philips Aff.), ¶ 13 [RA 205]; Tab 4, Subtab 2 (Freeman Aff.), ¶ 5 [RA 210].

14. In addition, the Retired Employees' Benefit Fund for the Coal Division (and its obligations) were transferred to EACC, and thereafter the Fund paid the health benefits for retirees. Tab 4, Subtab 1 (Philips Aff.), ¶ 14 [RA 205]. Finally, for those Coal Division retirees covered by Eastern's pension plan, EACC annually paid an amount into Eastern's plan sufficient to cover payments to those retirees. Id. at ¶ 15. EACC even continued to recognize that the children and grandchildren of retirees from Eastern's Coal Division were eligible to attend Camp Lightfoot. Tab 4, Subtab 2 (Freeman Aff.), ¶ 6 [RA 210].

15. EACC also assumed all contractual commitments between Eastern and various third parties. In connection with general contract matters, Eastern advised all vendors on December 31, 1965 that:

> All commitments on the part of Eastern Gas and Fuel Associates made prior to January 1, 1966, including contracts, agreements, leases and purchases for delivery or completion after January 1, 1966, will be assumed by Eastern Associated Coal Corp., until the same should be terminated.

Tab 4, Subtab 5 (Romeo Aff.), Ex. D [RA 262]. See also Tab 4, Subtab 1 (Philips Aff.), ¶ 12 [RA 204].

16. More importantly, EACC accepted and performed Eastern's contracts with the United Mine Workers of America ("UMWA"). Thus, EACC replaced Eastern as the member company in the Bituminous Coal Operators Association ("BCOA"), the organization of coal operators that negotiated with the UMWA. Tab 4, Subtab 2 (Freeman Aff.), ¶ 9 [RA 211-12]. EACC likewise replaced Eastern as the signatory to the National Bituminous Coal Wage Agreements ("NBCWA"), including accepting Eastern's obligation to contribute a certain amount per ton of coal mined to the UMWA 1950 Welfare and Retirement Fund (described more fully below), and Eastern's obligation to give priority to union miners who had been laid off at one Eastern mine when rehiring at another Eastern (now EACC) mine. Tab 4, Subtab 2 (Freeman Aff.), ¶¶ 8-9 [RA 211-12]; Tab 4, Subtab 4 (McVey Aff.), ¶ 20 [RA 224].

17. The records of the UMWA Retirement and Benefits Fund recognize that EACC was the successor to Eastern's coal-related liabilities. The Fund records of the dates on which particular companies signed coal wage agreements identify EACC as a signatory for the formerly Eastern mines from January 1, 1966 forward. The January 1, 1966 date, however, does not correlate with the date of a new NBCWA – meaning that EACC could only have been recognized as a NBCWA signatory, and an employer of UMWA member employees, if (as was the fact) it succeeded to Eastern's status as a signatory. These documents were also Exhibits 4 and 5 to the deposition of Marilyn O'Connell and were identified by her as the documents used by the Social Security Administration ("SSA") to determine operators' signatory status. Tab 4, Subtab 6 (Elias Aff.), Ex. B [RA 580-86] (relevant excerpts of Fund's computerized records of signatory dates).

18. The fact that EACC was responsible for all of Eastern's coal-related liabilities was of great practical importance to Eastern. Tab 4, Subtab 3 (Weinig Aff.), ¶¶ 5-6 [RA 214-15]. Because Eastern was a Massachusetts business trust, and not a corporation, the risk existed that a creditor might argue that the

shareholders of the trust were responsible for any unsatisfied debts of Eastern. Id. It was, therefore, very important to both Eastern and its shareholders that actual and potential liabilities be identified and that responsibility for them be limited to the appropriate subsidiary. Id. Eastern's ability to raise capital from institutional investors and in bond offerings was greatly facilitated by the fact that EACC was responsible for all known and unknown coal-related liabilities. Id.

19. Eastern currently owns three subsidiaries: Boston Gas, New England's largest distributor of natural gas, providing service to over 2 million customers in the Commonwealth; Midland Enterprises Inc., a leading barge operator on the nation's inland waterways; and WaterPro Supplies Corporation, a wholesale distributor of components for municipal water and wastewater systems. Eastern is currently in the process of selling WaterPro, and has been forced to indemnify WaterPro against any liabilities for premiums due from Eastern to the Combined Fund asserted against WaterPro as a "related person" under the Coal Act. Tab 45, Supplemental Affidavit of James J. Harper, ¶¶ 2,4 [RA 1568, 1569].

The Sale of EACC to Peabody

20. In 1987, Eastern sold EACC to Peabody Holding Company, Inc., in a stock transaction in which Peabody acquired all of the stock of Coal Properties Corp. which, in turn, held all of the stock of EACC. Tab 4, Subtab 3 (Weinig Aff.), ¶ 9 [RA 216-17]. As a result, all of EACC's liabilities (including the liabilities assumed from Eastern in 1966) remained with EACC.

21. Since the transaction involved only a transfer of the EACC stock, Peabody explained to the UMWA that EACC maintained its corporate identity, and that the acquisition had no effect on EACC's obligations under the NBCWAs. Tab 4, Subtab 6 (Elias Aff.), Ex. A [RA 579].

22. Because EACC, not Eastern, was responsible for the retirees from Eastern's Coal Division (including the miners

assigned to Eastern under the Act), all the records pertaining to those retirees (including workers compensation, Black Lung and other employment records) remained in EACC's possession, and EACC retained them when it was sold to Peabody. Tab 4, Subtab 4 (McVey Aff.), ¶ 9 [RA 220-21].

23. It appears that Peabody, at some point in the Coal Act assignment process, agreed to accept Coal Act responsibility for Eastern's former employees. In OCRO Technical Instruction Bulletin – Number 1, issued in September 1993, SSA stated "[C]orrespondence from Peabody says that they accept responsibility for Eastern Gas and Fuel Association. Eastern Gas and Fuel was formerly the name of Eastern Enterprises." Tab 50, OCRO Technical Instruction Bulletin – Number 1 [RA 1770].

The History of the 1950 W&R Fund While Eastern Mined Coal

24. Prior to the 1940s, UMWA collective bargaining agreements contained no provisions concerning pension or medical benefits. In the 1940s, during collective bargaining negotiations between the UMWA and bituminous coal mining companies, the UMWA demanded the creation of a health and welfare fund for its member miners. The coal companies rejected the UMWA's demand; as a result, the UMWA initiated a strike. Subsequently, President Truman issued an executive order on May 21, 1946 directing the Secretary of the Interior, Julius Krug, to seize the mines. The order also authorized the Secretary to negotiate with the UMWA regarding employment terms and conditions. Tab 42, Staff of House Comm. on Ways and Means, 103d Cong., lst Sess., Financing UMWA Coal Miner "Orphan Retiree" Health Benefits 100-101 (Comm. Print 1993) [RA 1427] [hereinafter "Ways and Means Report"]; Tab 41, Coal Commission Report: A Report to the Secretary of Labor and the American People (Nov. 1990) at 18-19 [RA 1349-50] [hereinafter "Coal Commission Report"].

25. On May 29, 1946, the federal government and the UMWA executed the 1946 National Bituminous Coal Wage Agreement (the "1946 NBCWA"), also known as the Krug-Lewis Agreement, bringing an end to the coal strike. The Krug-Lewis Agreement was effective only during the period of government operation of the mines from May 1946 to June 1947, and contained several provisions providing the "broad outlines" for an employer-sponsored health and welfare program. Tab 42, Ways and Means Report at 101 [RA 1532]; Tab 9, 1946 NBCWA at 132-134 [RA 612-13]. The "health and welfare program" outlined by the Krug-Lewis Agreement comprised two funds: A "Welfare and Retirement Fund," and a "Medical and Hospital Fund." Tab 9, 1946 NBCWA at 132 [RA 612-13].

26. The Welfare and Retirement Fund was financed by a tonnage royalty on bituminous coal production, and was to make payments to miners, and their dependents and survivors, for, inter alia, (i) wage loss due to sickness, disability or retirement, and (ii) and "other related welfare purposes." The Welfare and Retirement Fund was to be managed by three trustees, one appointed by the federal government, one by the UMWA, and the third chosen by the other two. Tab 41, Coal Commission Report at 18-19 [RA 1349-50]. The Welfare and Retirement Fund did not provide medical care benefits. Tab 9, 1946 NBCWA at 132 [RA 612].

27. The separate Medical and Hospital Fund was to be financed by wage deductions rather than by employer contributions; as well, the Medical and Hospital Fund was to be administered entirely by UMWA-appointed trustees, and was to provide medical, hospital and related services to active miners and their dependents. Tab 9, 1946 NBCWA at 132-134 [RA 612-13]; see also Tab 42, Ways and Means Report at 101-02 [RA 1532-33]; Tab 41, Coal Commission Report at 18-19 [RA 1349-50].

28. On July 7, 1947, after control of the mines had been returned to the mine owners, the UMWA entered into a new

collective bargaining agreement, the 1947 National Bituminous Coal Wage Agreement ("1947 NBCWA"), this time with numerous coal operators, including Eastern through its Coal Division. Tab 10, 1947 NBCWA [RA 615].

29. The 1947 NBCWA created a single union welfare trust permitted by Section 302(b) of the Labor Management Relations Act, 29 U.S.C. § 186. The trust was named the UMWA Welfare and Retirement Fund. ("1947 W&R Fund"). Under the express terms of the 1947 NBCWA, the 1947 W&R Fund acquired only the assets of the two Krug-Lewis funds. Tab 10, 1947 NBCWA at 149-150 [RA 620-21]. The 1947 NBCWA required signatory employers to pay the 1947 W&R Fund a royalty of 10¢ a ton for the coal they produced or sold for the duration of the 1947 NBCWA. Id. at 149 [RA 620].

30. The 1947 NBCWA did not mandate any specific benefit be paid from the 1947 W&R Fund, but authorized the 1947 W&R Fund trustees to determine what benefits to provide. The 1947 NBCWA gave the trustees "full authority" to determine benefit eligibility, benefit amounts, the priority among different kinds of benefits, and the manner of providing benefits. The trustees were required to make their benefit determinations by written resolution. Tab 10, 1947 NBCWA at 144-47 [RA 618-19].

31. The 1947 W&R Fund was financed by tonnage royalty payments, and not by employee wage deductions. In contrast, the Medical and Hospital Fund created by the Krug-Lewis Agreement had been financed by "the wage deductions presently being made and such as may hereafter be authorized by the Union and its members for medical, hospital and related purposes." Tab 9, 1946 NBCWA at 133 [RA 612]; Tab 10, 1947 NBCWA at 144 [RA 618].

32. The 1947 W&R Fund was governed by three trustees, one of whom was appointed by the UMWA and one of whom was appointed by mine operators signatory to the 1947 NBCWA. Tab 10, 1947 NBCWA at 144-45 [RA 618]. The

Union representative, by the terms of the 1947 and subsequent NBCWAs, was named Chairman of the trustees of the Fund. Tab 10, 1947 NBCWA at 147 [RA 619]. For many years, and at least between 1947 and the early 1970s, the UMWA trustee dominated the Fund's affairs. Blankenship v. Boyle, 329 F. Supp. 1089, 1095 (1971), affirmed 511 F.2d 447 (1975).

33. The 1947 W&R Fund trustees, over the opposition of the employer-appointed trustee, voted to fund pension benefits directly from the tonnage royalty revenues received from NBCWA operators, rather than investing those receipts in income-producing assets and using investment income to pay pension benefits. This method of benefit financing was called "pay-as-you-go." Tab 42, Ways & Means Report at 104 n. 12 [RA 1535]. The employer-appointed trustee initiated litigation to restrain the majority trustees from using a "pay-as-you-go" financing method, id., but his suit was rejected by the District Court for the District of Columbia, see Van Horn v. Lewis, 79 F. Supp. 541 (D.D.C. 1948) and the pay-as-you-go method was initiated for all benefits. Id. For decades thereafter the employer-appointed trustee was effectively excluded from the decision-making process concerning management of the Fund. Blankenship v. Boyle, 329 F. Supp. 1089 (1971), affirmed 511 F.2d 447 (1975).

34. On July 1, 1948, the UMWA and certain coal operators, including Eastern through its Coal Division, entered into a new NBCWA ("1948 NBCWA"). The only substantive change this agreement made to the 1947 W&R Fund was to increase the operator tonnage royalty payments to 20¢ a ton. Tab 11, 1948 NBCWA at 166 [RA 630].

35. On March 5, 1950, the UMWA and certain coal operators, including Eastern through its Coal Division, entered into a new NBCWA ("1950 NBCWA"). The only substantive changes this agreement made to the 1947 W&R Fund were to rename it as the "UMWA Welfare and Retirement Fund of 1950" ("1950 W&R Fund") and to increase operator tonnage

royalty payments to 30¢ a ton. Tab 12, 1950 NBCWA at 59-65 [RA 638-41].

36. The 1950 NBCWA was amended, effective January 18, 1951 ("1951 NBCWA"), to reflect the creation of the Bituminous Coal Operators' Association (BCOA), a multi-employer bargaining association, as the collective bargaining representative of certain member operators and the primary negotiator with the UMWA for subsequent agreements. Eastern was a member of the BCOA through 1965. The 1951 NBCWA did not change the terms controlling the 1950 W&R Fund. Tab 13, 1951 NBCWA [RA 647-48].

37. The 1950 NBCWA was again amended in 1952, 1955, 1956, 1958, and 1964. Tabs 14-18 [RA 649-85]. None of these NBCWAs changed the terms controlling provision of health benefits to UMWA retirees; the operators' tonnage royalty payment increased to 40¢ per ton of mined coal in 1952, see Tab 14, 1952 NBCWA at 41 [RA 650], and a contribution obligation of 80¢ per ton of coal purchased from non-UMWA operators during participation in an NBCWA was established in 1964. Tab 18, 1964 NBCWA at 5 [RA 669]. Eastern, through its Coal Division, was a signatory only through the 1964 Amendment, by virtue of its membership in the BCOA.

38. The UMWA and the BCOA again amended the 1950 NBCWA in 1966, 1968 and 1971, after EACC had succeeded to all Eastern's coal operations and obligations; none of these Amendments significantly changed the terms controlling provision of health benefits to UMWA retirees. EACC was a signatory to the 1966, 1968 and 1971 NBCWAs; Eastern was not. Tab 19, 1966 NBCWA [RA 686-701]; Tab 20, 1968 NBCWA [RA 702-24]; Tab 21, 1971 NBCWA [RA 725-36].

The 1950 W&R Fund Trustees Retained Discretion to Terminate, Suspend or Modify Benefits Unilaterally

39. Signatory operators to the 1950 NBCWA made no commitment to miners concerning the scope or duration of

benefits they would receive. Rather, the trustees of the 1950 W&R Fund were given:

> full authority . . . with respect to questions of coverage and eligibility, priorities among classes of benefits, amounts of benefits, methods of providing or arranging for provisions for benefits, investment of trust funds, and all other related matters.

Tab 12, 1950 NBCWA at 61 [RA 639].

40. During the time that Eastern mined coal, "[s]ubject to the stated purposes of this Fund, the Trustees [had] full authority, within the terms and provisions of the 'Labor-Management Relations Act, 1947,' and other applicable law, with respect to questions of coverage and eligibility, . . . amounts of benefits, methods of providing or arranging for provisions for benefits, investment of trust funds, and all other related matters." Id.

41. As part of the trustees' authority, they explicitly retained the right to modify benefit levels at their discretion:

> Trustee regulations governing Benefits specifically provide that all Benefits which have been authorized are subject to termination, suspension, revision, or amendment by the Trustees in their discretion at any time. . . . The Trustees have full authority within the terms of the Trust Agreement and applicable law to determine the types and amounts of Benefits which shall be granted, and to establish eligibility requirements.

Tab 27, 1958 Report of the 1950 W&R Fund at 20-21 [RA 955-56]. See also Tab 28, 1959 Report of the 1950 W&R Fund at 27-28 [RA 995-96] (same); Tab 29, 1960 Report of the 1950 W&R Fund at 19-20 [RA 1028-29] (same); Tab 30, 1961 Report of the 1950 W&R Fund at 5 [RA 1047] (same); Tab 31, 1962 Report of the 1950 W&R Fund (same) at 5 [RA 1080]; Tab 32, 1963 Report of the 1950 W&R Fund (same) at 5 [RA 1113]; Tab 33, 1964 Report of the 1950 W&R Fund (same) at 8 [RA 1146];

Tab 34, 1965 Report of the 1950 W&R Fund (same) at 18 [RA 1191]; and Tab 35, 1966 Report of the 1950 W&R Fund (same) at 19 [RA 1223].

42. Employers signatory to the 1950 NBCWA, as amended, never promised "lifetime benefits" to the miners. "Resolutions adopted by the Trustees governing Fund Benefits – Pensions, Hospital and Medical Care, and Widows and Survivors Benefits – specifically provide that all these Benefits are subject to termination, revision, or amendment, by the Trustees in their discretion at any time. No vested interest in the Funds extends to any beneficiary." Tab 25, 1955 Report of the 1950 W&R Fund at 4 [RA 869-70] (emphasis added). See also Tab 26, 1956 Report of the 1950 W&R Fund (same) at 30 [RA 929]; Tab 51, Blue Diamond Coal Co. v. Shalala, 174 B.R. 722, 724 (1994) [RA 1771, 1773]; (Fund "promised its beneficiaries no permanent or perpetual benefits. In fact, beneficiaries of this plan were specifically told that benefits were revocable and not vested.").

43. Eligibility for benefits from the 1950 W&R Fund was determined solely by the trustees of that Fund and eligibility requirements were revised at the discretion of the trustees without input from the operators. Tab 27, 1958 Report of the 1950 W&R Fund at 21 [RA 956]. ("Additional eligibility requirements established by the trustees in their discretion govern authorization of all Trust Fund Benefits, and are subject to Trustee revision at any time"). See also Tab 26, 1956 Report of the 1950 W&R Fund at 31 [RA 930] (same); Tab 28, 1959 Report of the 1950 W&R Fund at 28 [RA 996] (same); Tab 29, 1960 Report of the 1950 W&R Fund at 20 [RA 1029] (same); Tab 30, 1961 Report of the 1950 W&R Fund at 5 [RA 1047] (same); Tab 31, 1962 Report of the 1950 W&R Fund at 5 [RA 1080] (same); Tab 32, 1963 Report of the 1950 W&R Fund at 5 [RA 1113] (same); Tab 33, 1964 Report of the 1950 W&R Fund at 9 [RA 1147] (same); Tab 34, 1965 Report of the 1950 W&R Fund at 18 [RA 1191] (same).

44. The explicit authority of the Fund to modify eligibility requirements or terminate benefits was made clear to all

beneficiaries eligible to receive benefits. "With their first check [applicants for Pension and for Widows and Survivors Benefits] are mailed an official notice of Benefit authorization, which states that the Benefit is subject to termination, revision, or amendment at any time." Tab 25, 1955 Report of the 1950 W&R Fund at 9 [RA 875]; Tab 51, In re Blue Diamond Coal Co. 174 B.R. 722 (1994) [RA 1771].

45. Throughout the time that Eastern mined coal, the 1950 W&R Fund's Annual Reports stressed that the Fund had informed the beneficiaries that "Trustee regulations governing Benefits specifically provide that all Benefits which have been authorized are subject to termination, suspension, revision or amendment by the Trustees in their discretion at any time. Each beneficiary is officially notified of this governing provision at the time his Benefit is authorized." Tab 27, 1958 Report of the 1950 W&R Fund at 20-21 [RA 955-56]; Tab 28, 1959 Report of the 1950 W&R Fund at 27 [RA 995]. See also Tab 29, 1960 Report of the 1950 W&R Fund at 19-20 [RA 1028-29] (same); Tab 30, 1961 Report of the 1950 W&R Fund at 5 [RA 1047] (same); Tab 31, 1962 Report of the 1950 W&R Fund at 5 [RA 1080] (same); Tab 32, 1963 Report of the 1950 W&R Fund at 5 [RA 1113] (same); Tab 33, 1964 Report of the 1950 W&R Fund at 8 [RA 1146] (same).

The 1950 W&R Fund Trustees Frequently Modified, Suspended, Or Terminated Benefits

46. The trustees frequently exercised their unilateral authority to modify, suspend, or terminate benefits. During the years that Eastern mined coal, the trustees repeatedly terminated, decreased, or otherwise modified benefits that had previously been paid to beneficiaries. For example, in 1949, the "Trustees authorize[d] a temporary suspension of payments by the Fund to beneficiaries for Pensions, Disability Benefits, Death Benefits, Widows and Orphans Assistance, and for Medical and Hospital Service. . . ." Tab 36, Resolution No. 26 of the 1947 W&R Fund [RA 1230].

47. Also in 1949, "[a]ll benefit payments [were] stopped pursuant to action by trustees." Tab 40, Chronology: Welfare Fund Established at 13 [RA 1313].

48. In 1950, the trustees "rescinded" health benefit coverage for "the treatment of paraplegics and severely handicapped miners at special treatment and rehabilitation centers." Tab 37, Resolution Nos. 12 and 11 of the 1950 W&R Fund [RA 1238, 1235].

49. In 1953, the trustees "rescinded" a "death benefit gratuity of not to exceed" $1,000. Tab 37, Resolution Nos. 25 and 9 of the 1950 W&R Fund [RA 1246, 1231].

50. In 1954, the trustees "rescinded" the provision of "maintenance aid for dependent children and widows" of miners killed in the mines. Tab 37, Resolution No. 35 of the 1950 W&R Fund [RA 1247]. The 1950 W&R Fund had earlier been paying $40.00 per month for "dependent children of deceased miners who are living with their mothers," and $10.00 for each additional child, and $30 for "widows of miners fifty (50) years of age or over who have no dependent children." Tab 37, Resolution No. 16 of the 1950 W&R Fund [RA 1243].

51. In 1954, the trustees "rescinded" the provision of "rehabilitation benefits and maintenance aid to miners." Tab 37, Resolution No. 36 of the 1950 W&R Fund [RA 1248]. The 1950 W&R Fund had earlier been paying a "rehabilitation benefit of $30.00 per month, with an additional $10.00 for their wives and an additional $10.00 for each child under 18 years of age." Tab 37, Resolution No. 14 of the 1950 W&R Fund [RA 1240].

The Trustees Of The 1950 W&R Fund Unilaterally Modified The Eligibility Requirements To Receive Benefits

52. During the time that Eastern mined coal, the trustees also acted unilaterally to modify the eligibility requirements for a variety of benefits whenever the financial situation of the 1950 W&R Fund required, despite the impact on beneficiaries. In an

effort to curtail hospital expenses, in 1957, the 1950 W&R Fund unilaterally implemented changes to procedures for hospital admissions. Tab 27, 1958 Report of the 1950 W&R Fund at 7-12 [RA 943-48].

53. In 1960, the trustees took dramatic steps to "curtail the excess of expenditures over income." Tab 29, 1960 Report of the 1950 W&R Fund at 2 [RA 1011]. To reduce expenditures, the trustees: "limited or terminated eligibility for Trust Fund Benefits," Id.; "limited eligibility of unemployed miners for [Hospital, Medical, and Surgical] services to one year after the date of last regular employment in a classified job in the mine of [a signatory] operator . . . and terminated eligibility of miners for these services even though they may be, or may have been, performing classified work, if self-employed or in any way connected with the ownership, operation, or management of a mine," Id. [RA 1021]; and eliminated "Funeral Expense and Widows and Survivors Benefits" for dependents of a deceased miner if the miner was unemployed for more than a year since his last job with a signatory operator. Id. at 18 [RA 1027].

54. In 1961, the trustees reduced the amount of the monthly pension benefit by 25%. Tab 30, 1961 Report of the 1950 W&R Fund, at 2 [RA 1044].

55. In 1977, the trustees did not implement new benefits called for in the NLCWA because of lack of funding. Tab 38, UMWA Fund Annual Report for the Year Ending June 30, 1977, at 3 [RA 1253].

56. Miners were well aware that the trustees of the 1950 W&R Fund regularly exercised their authority to change, reduce, or eliminate benefits. Tab 41, Coal Commission Report at 23 [RA 1353]; Tab 51, In re Blue Diamond Coal Co. 174 B.R. 722 (1994) [RA 1771].

The Change to a Defined Benefit Plan

57. In 1974, concurrently with the enactment of the Employee Retirement Income Security Act of 1974 ("ERISA"),

29 U.S.C. §§1001, et seq., the BCOA and UMWA entered into a new NBCWA ("1974 NBCWA"). The 1974 NBCWA, inter alia, divided the 1950 W&R Fund into four separate trusts: (i) the UMWA 1950 Benefit Plan and Trust ("1950 Benefit Trust") (providing health benefits to miners who retired before January 1, 1976 and their dependents); (ii) the UMWA 1974 Benefit Plan and Trust ("1974 Benefit Trust") (providing health benefits to both active miners and retired miners who retired on or after January 1, 1976 and their dependents); (iii) the UMWA 1950 Pension Plan and Trust ("1950 Pension Trust") (providing pension benefits to miners who retired before January 1, 1976); and (iv) the UMWA 1974 Pension Plan and Trust ("1974 Pension Trust") (providing pension benefits to miners who retired after January 1, 1976). Tab 22, 1974 NBCWA at 83-106 [RA 747-59]. The pension trusts were drawn to comply with ERISA vesting and funding requirements, and thereby abandoned the old pay-as-you-go method of financing pension benefits used by the 1950 W&R Fund.

58. The 1974 NBCWA was the first NBCWA to mention retiree health benefits, and the first to specifically mandate certain benefits from the UMWA welfare and pension funds. Tab 42, Ways and Means Report at 4.[RA 1435]. Among those contractually mandated benefits was a "health card for life" granted by the NBCWA to all UMWA pension recipients and their spouses; spousal health cards terminated upon remarriage. Tab 22, 1974 NBCWA at 105-06 [RA 758-59]. EACC was a signatory to the 1974 NBCWA; Eastern was not. The 1974 NBCWA retained the "tonnage royalty" funding structure of previous NBCWAs for the 1950 Pension and Benefit Trusts, whereby operators paid a certain amount per ton of coal mined to the Funds. The 1974 NBCWA also instituted contributions based on production hours worked by UMWA employees for the 1974 Pension and Benefit Trusts. Tab 22, 1974 NBCWA at 86-92 [RA 749-52].

59. By the late 1970s, in addition to the financial impact of long-term mismanagement of the 1950 W&R Fund by the

UMWA-controlled trustees over the objections of the employer-appointed trustees, a combination of demographic and economic factors began to adversely affect the financial stability of the UMWA Benefit Trusts. These factors included significant reductions in the amount of coal produced under the 1974 NBCWA, the retirement of a generation of miners, the rapid escalation of health care costs, and the mandated benefits created by the 1974 NBCWA. These factors led to the restructuring of the UMWA Benefit Trusts in 1978. See, e.g., Barrick Gold Exploration, Inc. v. Hudson, 823 F.Supp. 1395, 1398-99 (S.D. Ohio 1993), affirmed 1995 WL 73352 (6th Cir. February 24, 1995); LTV Steel Co., Inc. v. Shalala (In re Chateaugay), 163 B.R. 955, 957 (S.D.N.Y. 1993) ("LTV"), appeal docketed, No. 94-6024 (2nd Cir. Jan. 18, 1994); see also Tab 42, Ways and Means Report at 33-36 [RA 1464-67]; Tab 41, Coal Commission Report at 42-49 [RA 1372-79]; Blankenship v. Boyle, 329 F. Supp. 1089 (1971), affirmed 511 F.2d 447 (1975) (gross mismanagement of Fund by controlling UMWA trustees from inception of Fund through 1971).

60. The 1950 W&R Fund was severely affected by decades of mismanagement by the UMWA and neutral trustees who violated their fiduciary duties to the Fund beneficiaries in favor of the UMWA. "Conflicts of interest were openly tolerated and their implications generally ignored. ... The Fund proceeded without any clear understanding of the trustees' exclusive duty to the beneficiaries, and its affairs were so loosely controlled that abuses, mistakes and inattention to detail occurred. ..." Blankenship v. Boyle, 329 F. Supp. 1089, 1095 (1971), affirmed 511 F.2d 447 (1975). The major breach of trust was the trustees' failure to invest "enormous cash balances" in interest-bearing accounts, choosing instead to leave them on deposit with a UMWA-controlled bank "on demand to the Bank's advantage but earning nothing for the Fund. This practice continued in spite of suggestions from successive Operator trustees that the money should be used to earn income for the beneficiaries." Id. at 1096. The decision to engage in these breaches of fiduciary duty was made "contemporaneously with the creation of the

Fund," Id. at 1099; the UMWA and "neutral" trustees, "rather than replying to [the employer-appointed trustee's] repeated complaints [regarding the failure to invest and conflicts of interest] ignored his protests altogether." Id. at 1100. In fact, "often matters of considerable import were resolved between meetings by [the UMWA and the "neutral" trustee] without even consulting the Operator trustee." Id. at 1095.

61. In 1978, the BCOA and the UMWA executed a new NBCWA that restructured the 1974 Benefit Plan ("1978 NBCWA") (Tab 23) [RA 766]. The 1978 NBCWA required its employer signatories to provide health care coverage directly to their own active employees and to their retirees in the 1974 Pension Trust assignable (under contract criteria) to those employers. The 1974 Benefit Trust was left to provide health care coverage to those UMWA pensioners in the 1974 Pension Trust whose employers were no longer in business. Tab 23, 1978 NBCWA at 95-96 [RA 778-79]. The Trusts continued to be funded by tonnage royalty payments, as well as per hour worked premiums instituted by the 1974 NBCWA. Tab 23, 1978 NBCWA at 98 [RA 780].

62. The 1978 NBCWA also adopted the "Evergreen Clause," which has been interpreted by at least one federal court as requiring employers participating in the 1978 or later NBCWAs to continue paying royalties to the two UMWA Benefit Plans, at the prevailing NBCWA rate, even if the employer did not participate in succeeding NBCWAs. In re UMWA Employee Benefit Plans Litigation, 782 F.Supp. 658 (D.D.C. 1992), certified for interlocutory appeal, 793 F.Supp. 339; aff'd, 1993 U.S. App. Lexis 1595 (D.C. Cir. 1993). The "evergreen" clause provides:

> Any Employer who employed any Participant eligible for coverage under, or who received or receives benefits under, the 1950 [1974] Benefit Plan and Trust, or any Employer who was or is required to make, or who has made or makes contributions to the 1950 [1974] Benefit Plan and Trust, is obligated and required to comply with the terms and conditions of the 1950 [1974] Benefit Trust, as amended from time to time, including, but not limited to making the contributions required under the National Bituminous Coal Wage Agreement of 1978, as amended from time to time, and any successor agreements thereto.

Id.

63. The 1978 NBCWA also adopted, for the first time, a "guarantee" clause in which the BCOA signatories to the 1978 NBCWA agreed to guarantee sufficient funding for UMWA Benefit Plan medical costs. See UMWA 1950 Benefit Plan and Trust v. Bituminous Coal Operators' Ass'n, 898 F.2d 177, 181 (D.C. Cir. 1990). That clause, which has been included in every subsequent NBCWA, including the 1988 NBCWA, reads:

> **Guarantee of 1950 Plans and Trusts and 1974 Plans and Trusts**
>
> Notwithstanding any other provisions in this Agreement the Employers hereby agree to fully guarantee the pension and health benefits provided by the 1950 Pension Fund, the 1950 Benefit Fund, the 1974 Pension Fund, the 1974 Benefit Fund and all other benefit plans described in Section (c) of this Article XX during the term of this Agreement.
>
> In order to fully fund these guaranteed benefits, the BCOA may increase, not decrease, the rate of contributions to be made . . .. These contributions, which may be adjusted from time to time, shall be made by all Employers signatory hereto during the term of this Agreement.

Tab 23, 1978 NBCWA at 113-14 [RA 787-88]; Tab 24, 1988 NBCWA at 141-42 [RA 827-28] (boldface in originals). The effect of all these changes was to convert the defined contribution obligation of the BCOA signatories into a defined benefit obligation.

64. In the 1980s, the financial stability of the 1950 and 1974 Benefit Trusts continued to be plagued by a number of factors, including spiraling health care costs, withdrawal of 1974 and

1978 signatory operators from the Trusts (thereby "dumping" their retirees into the 1974 Benefit Trust), and several judicial decisions increasing the Trusts' beneficiary population without corresponding increases in coal operator contributions. See, e.g., Tab 42, Ways and Means Report at 14-21 [RA 1445-52]; Tab 41, Coal Commission Report at 55-57 [RA 1384-86]; see also LTV 163 B.R. at 957; Barrick Gold, 823 F.Supp. at 1398-99; United Mine Workers of America v. Nobel, 720 F.Supp. 1169, 1174 (W.D. Pa. 1989), aff'd without opinion, 902 F.2d 1558 (3d Cir. 1990), cert. denied, – U.S. –, 111 S.Ct. 1102 (1991) (holding that the 1974 NBCWA promised lifetime health care to UMWA beneficiaries and had to serve as a safety net for any beneficiaries whose last employer was no longer obligated to provide benefits under a NBCWA); United Mine Workers of America v. Royal Coal Co., 768 F.2d 588 (4th Cir. 1985) (holding that employers had no obligation to contribute to the Funds past the expiration of the NBCWA to which they were signatory).

65. As more coal operators who had signed the 1978 NBCWA ceased contributing to the UMWA Benefit Trusts, their withdrawal forced the remaining participating employers to shoulder increasingly large contribution obligations to pay for not only their own retirees, but also newly "orphaned" retirees. These rising costs, in turn, created a downward spiral whereby still-contributing 1978 NBCWA signatory operators were themselves pressured to withdraw from the trusts – further shrinking the contribution base for a growing beneficiary population. Taken together, these forces threatened the financial stability of the UMWA Trusts. As the Combined Fund states,

> "One of the most important [factors leading to the 1950 and 1974 Funds' financial crisis] was that numerous coal companies that had signed the 1978 NBCWA (and, frequently, subsequent NBCWAs as well) attempted in the 1980s to avoid responsibility for contributing to the costs of health coverage for UMWA retirees and their dependents. These companies terminated their participation in the 1950

> and 1974 Benefit Funds and 'dumped' the retirees that they were then covering through individual employer plans into the 1974 Benefit Fund."

Amended Counterclaim of UMWA Combined Funds, ¶ 10 [RA 89-90].

66. The UMWA and various coal operators entered into another NBCWA in 1988 that provided, for the first time, that signatories who stopped contributing to the Funds – either because there was no successor NBCWA or because the company went out of the coal business – were required to make a substantial lump sum payment to the Funds. Tab 24, 1988 NBCWA at 142-45 [RA 828-29]; Tab 42, Ways and Means Report at 5 [RA 1436]. The 1988 NBCWA continued to provide for tonnage royalty payments from employers, as had all previous NBCWAs. As well, the 1988 NBCWA continued the per-hour contributions first instituted by the 1974 NBCWA. Tab 24, 1988 NBCWA at 125-35 [RA 819-24].

67. By 1990, the 1950 and 1974 Benefit Trusts had incurred a debt of over $100 million and their funding bases were declining faster than their respective beneficiary populations. The Trusts' ability to continue to provide health care benefits first mandated by the 1974 and 1978 NBCWAs was jeopardized, and the issue of retiree health care benefits had already contributed to a protracted strike at the Pittston Coal Company, a signatory to the 1978 NBCWA. See 138 Cong. Rec. §3437 (daily ed. Mar. 12, 1992) (statement of Sen. Byrd); Tab 41, Coal Commission Report at vii, 1, 3-4, 26-27 [RA 1324, 1332, 1334-35, 1356-57]; see also 136 Cong. Rec. §12312 (daily ed. Oct. 2, 1989) (statement of Sen. Rockefeller).

The Coal Act

68. On March 12, 1990, Secretary of Labor Elizabeth Dole created the Coal Commission and asked it to "examine the problem and to recommend a solution for assuring that orphan retirees in the 1950 and 1974 Benefit Trusts will continue to receive promised medical care." Tab 41, Coal Commission Report at 2 [RA 1333]. As one Coal Commission member noted, much of the deficit of the UMWA Funds "is attributable to 'orphaned' retirees whose companies have gone out of business or ceased paying health benefits. More than half of the Fund's population is composed of orphan retirees. How to continue to provide health benefits to 'orphans' is the essence of the problem." Tab 41, Coal Commission Report at vii [RA 1324].

69. The Coal Commission proposed "two alternative approaches for a possible long-term solution" to the perceived funding difficulties of the 1950 and 1974 Benefit Funds. Id. at viii [RA 1325]. The first proposal was an "industry-wide" tax on coal operators. Id. at 65 [RA 1394]. The second proposal was to "reach back" to impose liability on signatories of the 1978 and subsequent NBCWAs. Id. at 63 [RA 1392]; Tab 51, In re Blue Diamond Coal Co., 174 B.R. 722 (1994) [RA 1774] ("The report did not suggest that pre-ERISA signatories of NBCWAs . . . had ever promised lifetime benefits or that they should be included in the 'reach back' provision").

70. In the wake of the Coal Commission Report, Congress considered a series of proposed solutions to fund the provision of UMWA retiree health care benefits, ranging from an industry tax to funding requirements for present signatories and on a reachback provision for 1978 and later NBCWA signatories. As a result of a Senate floor amendment, however, Congress extended the Coal Act to every coal operator which had signed any coal wage agreement from 1946 forward to make contributions to a new statutory benefit fund. Tab 42, Ways and Means Report at 52-56 [RA 1483-87]; Coal Act §§ 9701(b)(1), (c)(5). "In other words, the legislation goes

beyond the reachback suggested by the Coal Commission, which would have involved only post-ERISA signatories of collective bargaining agreements, to encompass coal companies . . . that have not signed NBCWAs since well before ERISA required vested benefits." Tab 51, In re Blue Diamond, 174 B.R. at 725 [RA 1774].

71. The Coal Industry Retiree Health Benefit Act of 1992 (the "Coal Act") was passed by Congress as part of the comprehensive Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776. It rests on the legislative finding that:

> [I]n order to secure the stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

Energy Policy Act § 19142(a)(2), 26 U.S.C. § 9701 note (emphasis added).

72. In determining which companies would be required to contribute, Congress acted under the mistaken assumption that every signatory to any NBCWA since 1946 had made an unqualified "promise" to provide lifetime health benefits to UMWA retirees. See 138 Cong. Rec. S10,784 (daily ed. July 29, 1992) (statement of Sen. Byrd) ("[t]his amendment . . . says that when promises are made, promises will be kept"); id. at S10,785 (statement of Sen. Byrd) (Act's goal is "to protect the retirees who were promised lifetime benefits"); id. at S10,786 (statement of Sen. Wofford) ("retired miners are entitled to the health care benefits they were promised").

73. The Coal Act created three funding mechanisms, only one of which is at issue here: the UMWA Combined Benefit Fund ("Combined Fund"). 26 U.S.C. §§ 9702, 9711, 9712. The Combined Fund is the result of a statutory merger of the 1950 Benefit Fund and the 1974 Benefit Fund. Id. § 9702(a)(2).

74. The Combined Fund is financed by three transfers of $70 million from the 1950 Pension Fund, by subsequent transfers of unspecified amounts from the Abandoned Mine Reclamation Fund, and by health insurance premiums and death benefit premiums paid by each "assigned operator." Id. § 9705. Under the Coal Act, a signatory to any NBCWA since 1946 may be an "assigned operator." Id. § 9701(c)(5).

75. Unlike operators' obligations to contribute to the 1950 W&R Fund, which were based on a flat rate multiplied by the tonnage of coal mined or purchased, the Coal Act requires signatory operators to contribute on a "per beneficiary" basis. 26 U.S.C. § 9704(b).

76. Premium amounts must be sufficient to maintain the same level of benefits for retired UMWA miners, and their surviving spouses and dependents, as were provided under the 1988 NBCWA. Id. § 9703(b). Premiums must be paid every year until all beneficiaries have died or otherwise ceased to be eligible. Id. § 9704. Comparisons of benefits paid by the funds with those offered under other large group plans "highlight both the generosity of the UMWA benefit package and the absence of significant beneficiary cost-sharing requirements. These features remain essentially unchanged under [the Coal Act]." Tab 42, Ways and Means Report at 95 [RA 1526].

77. Beneficiaries were "assigned" by the Secretary of Health & Human Services ("Secretary") through the Social Security Administration ("SSA"), in theory according to the beneficiaries' degrees of prior employment with a signatory to any NBCWA since 1946. Id. § 9706(a),(b)(1). When the money transferred from the UMWA 1950 Pension Plan and the Abandoned Mine Reclamation Fund has been expended, each assigned operator will also be assessed a proportionate premium to pay for the costs of health benefits for "unassigned beneficiaries," i.e., "orphans" whose former employer, or any company related to the former employer, is no longer in business of any kind. Id. § 9704(d), (f).

78. The Combined Fund is included in the Federal budget. Premiums that companies must pay to the Combined Fund are treated as revenues of the Federal Government (as "miscellaneous governmental receipts") and the expenditures of the Combined Fund as Federal outlays. Budget specialists in both the congressional and executive branches concurred in scoring the Combined Fund as on-budget. Tab 54, Nonna A. Noto, Budget Treatment of the UMWA Retiree Health Benefit Program, Congressional Research Service Report for Congress (93-979 E, November 10, 1993) [RA 1817].

Eastern Never "Dumped" Miners -- EACC Continued Contributions at the Same or Higher Levels

79. The "promise" of lifetime benefits was first made by the members of the BCOA in the 1974 NBCWA and funding was first guaranteed in the 1978 NBCWA. Tab 41, Coal Commission Report at 63 [RA 1392]; Tab 51, In re Blue Diamond, 174 B.R. at 725, 726 [RA 1774, 1775]. Eastern extended neither that promise nor that guarantee, as Eastern had ceased mining coal in 1965, and was not a signatory to any NBCWA from 1966 on. EACC, Eastern's successor, was a signatory to all relevant NBCWAs, including the 1974, 1978 and 1988 NBCWAs. See Tabs 22-24 (1974, 1978 and 1988 NBCWAs) [RA 737, 766, 805].

80. In 1966, after Eastern had ceased mining coal and transferred all its coal operations to EACC, the 1950 W&R Fund had a positive balance of $145,021,431. Tab 35, 1966 Report of the 1950 W&R Fund at 3 [RA 1207]. As of June 30, 1992, the Benefit Funds had accumulated a deficit of almost $100 million: The 1950 Benefit Fund had a deficit of $86,179,000, Tab 39, UMWA Fund Annual Report for 1992 at 27 [RA 1292], and the 1974 Benefit Fund had a deficit of $10,777,000. Id. at 37 [RA 1301]. The Coal Act was enacted to remedy the deteriorating financial condition of the 1950 and 1974 Benefit Funds.

81. By 1966, when EACC succeeded Eastern, Eastern had contributed more than $50 million to the 1950 W&R Fund and had satisfied all its obligations under the NBCWAs to which it was a signatory. Tab 45, Supplemental Affidavit of James J. Harper , ¶ 5 [RA 1569].

82. From 1966 forward, EACC continued to operate the mines it acquired from Eastern until the reserves were depleted or the mining operations became uneconomical. As well, EACC opened and purchased additional mines after it acquired Eastern's coal operations. By 1986, EACC was operating more mines in West Virginia and Pennsylvania than had Eastern at the time it ceased mining operations, and EACC was mining at least as much coal as had Eastern in 1965. EACC used UMWA miners in its mines, and continued to make payments to the UMWA funds throughout this time. Tab 44, Supplemental Affidavit of Robert H. Freeman [RA 1565]; Tab 45, Supplemental Affidavit of James J. Harper [RA 1568].

83. The Combined Fund, according to its October 31, 1994 Financial Statements, is now in sound financial condition. The Combined Fund reported total assets of $248,388,000 as compared to total liabilities of $71,525,000, for net assets of $176,863,000. UMWA Combined Benefit Fund Financial Statements, October 31, 1994.

84. According to the Combined Fund's information as of October 1, 1994, there were 80,061 beneficiaries assigned to current and former signatory operators for the period starting February 1, 1993. With the addition of the 24,787 orphans and 2,201 beneficiaries whose reassignments are pending, there were 107,049 beneficiaries eligible for benefits from the Combined Fund. Fewer than 7,600 of the beneficiaries of the Combined Fund were assigned to "Super Reachback" operators, i.e., companies such as Eastern that last signed an NBCWA prior to 1978. Tab 43, Combined Fund's' Response to Request from Senator Rockefeller at 7 [RA 1562].

85. Of the 107,049 eligible beneficiaries, only 29.21% are pensioners or disabled miners; the remaining 70.79% are either surviving spouses of retired mine workers or dependents of miners or surviving spouses. Tab 43, Combined Fund's Response to Request from Senator Rockefeller at 6 [RA 1561]. Of the beneficiaries assigned to Eastern, 75% of them are either surviving spouses of retired mine workers or dependents of miners or surviving spouses. Tab 46, Supplemental Affidavit of George J. Rose [RA 1570].

SSA Assignment Process

86. In October, 1993, SSA, acting on behalf of the Department of Health and Human Resources, notified Eastern that it had assigned Eastern liability for the payment of health and death benefit premiums under the Coal Act for 2323 coal industry retirees and dependents. Later that month, the UMWA Combined Benefit Fund (the "Combined Fund") notified Eastern that it had assessed Eastern premiums for 1494 beneficiaries for an initial eight month period and for 1430 beneficiaries for the following twelve months. The resulting liability translates into a total liability, calculated on an actuarial basis, in excess of $100 million. Tab 5, Affidavit of James J. Harper, ¶ 5 [RA 592].

87. In connection with its administration of the Coal Act, SSA promulgated a series of interpretive guidelines to assist SSA employees in making beneficiary assignments. The guidelines include Transmittal No. 7 (SSA Pub. No. 68-0101402) (August 1993) ("Transmittal No. 7") (Tab 47) [RA 1573], and Transmittal No. 9 (SSA Pub. No. 68-0101402) (Jan. 1994) ("Transmittal No. 9") (Tab 49) [RA 1621].

88. SSA promulgated Transmittal No. 7 prior to the assignment of any beneficiaries to Eastern. At page RM

T01402.001C [RA 1578], Transmittal No. 7 provides as follows:

> Before October 1, 1993, SSA is to decide which mining operator shall be responsible for the premiums of each eligible beneficiary . . . . In making this decision, SSA must disregard periods when the employer was not a signatory to the agreement. If the mine operator is out of business, SSA must then determine whether there is a "related person (successor or jointly controlled business) of the mine operator. If so, the related business may be found responsible for the annual premiums payable to the Fund.

89. In Transmittal No. 9, SSA specified procedures for determining whether a successor company to a signatory operator is responsible for obligations under the Coal Act that would otherwise be assigned to the prior operator. Transmittal No. 9 states:

- "[a] successor is a replacement; one who follows or comes into place of another. The term is applied to a sole corporation or to any corporation. *A corporation may be considered the successor of another, although both corporations retain their corporate identity.* This status may exist in the absence of either a merger, amalgamation or technical consolidation. The status depends on the facts and surrounding circumstances." Tab 48, Transmittal No. 9 at RM T01402.051-3 [RA 1625-26] (underline in original; italics added);

- "[a] company is a successor company if it is a signatory to an UMWA coal wage agreement and either: *Expressly assumed health and death benefit obligations of retired persons last employed by the predecessor company by (for example): payment of health care bills or death benefits; or execution of a contract with a health carrier providing coverage for such persons; or implicitly assumed these obligations through promises of coverage or similar acts.*" Id. [RA 1626] (underline in original; italics added);

- "[i]f no explicit or implicit assumption of obligations has occurred, then a company is a successor company if: the new company has signed an UMWA wage agreement; and a majority of the employees presently working for the successor company formerly worked for the predecessor company; and the location is the same geographical area and the work functions have continued relatively unchanged; and operations are/were not suspended for longer than six months (not counting a strike period); and either there has been a transfer of a substantial proportion of the assets of the predecessor company to the successor company; or the successor company is owned and operated by substantially the same people who owned and operated the predecessor company." Id. [RA 1626-27] (underline in original).

90. On April 27, 1994, Eastern submitted a written request to SSA for guidance on a number of procedural issues, including the process for requesting relief from the Coal Act based on the fact that an existing company had succeeded to Eastern's coal-related liabilities. Among other things, Eastern highlighted that: (1) it had transferred its coal operations, including all assets and liabilities (with the exception of several leases), to EACC in 1966; (2) that EACC had been sold to Peabody Coal Corp. in 1987; (3) that all industry and personnel records of Eastern's coal operations had been transferred to EACC, and remained with EACC after its sale to Peabody; and (4) that SSA publications indicated that Eastern could obtain relief from the Coal Act by showing that a successor company to Eastern's coal operations existed. Tab 1, Letter from Eastern to SSA dated April 27, 1994 [RA 160].

91. On May 26, 1994, SSA responded to Eastern's April 27, 1994 letter. SSA stated that "if Eastern Enterprises presents us with prima-facie evidence that its status is such that no assignments should be made to it (for example, Eastern was not a signatory, was not in business when the assignment was made,

or transferred the mining operations to another company which ought to be the assignee) SSA will rescind the previous assignments and reassign the miners involved to the proper assignee." Tab 2, Letter from SSA to Eastern dated May 26, 1994 at 2-3 [RA 170-71]. (emphasis added).

92. On June 17, 1994, Eastern submitted its Request for Reassignment of Beneficiaries to Eastern Associated Coal Corp. The Request was supported by a memorandum of law and factual materials, including affidavits and relevant documents. Tab 3 (Memorandum in Support) [RA 172]; Tab 4 (Materials in Support) [RA 199].

93. After Eastern submitted its Request for Reassignment of Beneficiaries to Eastern Associated Coal Corp., SSA informed Eastern that SSA would not consider the Request until Eastern submitted its challenges to individual beneficiary assignments. On September 9, 1994, Eastern sent SSA its main submission in support of its request for review; this submission comprised thirty-four bankers' boxes addressing errors in individual assignments. Eastern noted that it had requested that all beneficiaries assigned to Eastern be reassigned to EACC as the successor to Eastern's coal operations.

94. On December 13, 1994 Eastern reiterated its request for review on "successor company" grounds, which had been submitted six months before on June 17, 1994. Tab 6, Letter from Eastern to SSA dated December 13, 1994 [RA 593]. As well, Eastern requested clarification of a number of aspects of the procedures by which a successor company challenge would be reviewed. (Tab 6) [RA 594].

95. On January 18, 1995, SSA responded to Eastern's September 9, 1994 submission and Eastern's December 13, 1994 letter (posing specific questions concerning SSA's treatment of the successor company issue). Tab 7, Letter from SSA to Eastern dated January 18, 1995 [RA 597]. SSA stated that "the Coal Act does not specifically provide for assignment of beneficiaries to successors of signatory operators." Tab 7 at 1

[RA 597]. SSA stated that it would assign beneficiaries to a successor to a signatory operator, but only if the signatory operator were no longer in business. Tab 7 at 2 [RA 598]. SSA stated that "if the employing company is no longer in business, we look to related companies, including successors, to assign beneficiaries." Tab 7 [RA 598]. SSA further stated that "if a signatory operator went out of business prior to the effective date of the Coal Act leaving a 'successor company' to continue former operations, the successor company is considered to have assumed the signatory operator's past liabilities for assignment purposes. However, if a signatory operator sells its assets under a sale agreement but remains in business, any provision concerning responsibility for past liabilities is considered a private agreement between the two parties. As such, SSA would disregard such a provision in making assignments under the Coal Act if the signatory operator is still in business." Tab 7 at 4 [RA 600].

96. SSA based its decision to deny relief on successor company grounds on Coal Act Supplemental Coal Act Review Instructions #3, which were created in December, 1994 ("Supplemental Instructions #3"), and which were directed to SSA personnel reviewing requests for review; Supplemental Instructions #3 state that "[a]n assigned signatory operator may allege it is not responsible under the Coal Act because it sold all of its mining operations to another (successor) company. After you determine that the purchaser meets the criteria for a 'successor' company, and the 'business status' of both the assigned operator and the 'successor' company, then use the following guidelines to determine the appropriate assignee under the Coal Act." Tab 49, Supplemental Instructions #3 at 35 [RA 1741]. Supplemental Instructions #3 go on to state that SSA will assign beneficiaries to successors, but only if the predecessor company is no longer "in business" according to complex criteria set out elsewhere in Supplemental Instructions #3.

97. On January 30, 1995, SSA sent Eastern SSA's first decision regarding an individual request for review. In that

decision, SSA denied Eastern's request that Samuel E. East (a deceased miner) and Josephine East be reassigned to EACC as Eastern's successor. The SSA stated "the 1966 reorganization of [Eastern's] mining assets into a subsidiary, Eastern Associated Coal Corporation, did not constitute a transfer of [Eastern's] liability for Coal Act assignments for past periods. The transfer could not establish Eastern Associated Coal Corporation as a 'successor' because [Eastern] remained in business." Tab 8, Letter from SSA to Eastern, dated January 30, 1995, at 2 [RA 603]. SSA stated that this decision was final. Id.

EASTERN ENTERPRISES,
by its attorneys,

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Dated: March 15, 1995

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

(Caption Omitted)

DEFENDANT UMWA COMBINED FUND
AND ITS TRUSTEES' RESPONSE TO
PLAINTIFF'S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE DISPUTE

Pursuant to Local Rule 56.1, Defendants United Mine Workers of America Combined Benefit Fund and its Trustees (the "Combined Fund"), by their undersigned counsel, hereby submit their response to Plaintiff's Statement of Material Facts As To Which There Is No Genuine Issue ("Plaintiff's Statement"). Plaintiff s Statement is a 35-page tome that consists consisting of 97 paragraphs, many of which contain legal conclusions or counsel's characterizations, rather than statements of fact. To the extent Plaintiff's Statement does contain factual assertions, many of these assertions are immaterial to any issues involved in this action. Nor does Plaintiff even represent that its factual assertions were included in the administrative record on which the Secretary based her assignment decisions. Moreover, Plaintiff's Amended Complaint, which alleges for the first time the only claim to which the present motion for summary judgment is directed, has only recently been filed. None of the parties has taken any discovery with respect to Plaintiff s new claim. If the Court were to conclude (contrary to the Trustees' view) that any of Plaintiff s newly asserted facts are material to the legal issue presented for decision, then all defendants including the Secretary, as well as the Trustees) would be entitled to explore these matters in discovery before any adverse decision on the meaning of the Coal Act could issue. Nevertheless, without conceding that any of the so-called facts set forth in Plaintiff's Statement are material, the Combined Fund responds as follows:

1. On information and belief, the Combined Fund admits that Plaintiff was organized in 1929 as a Massachusetts business trust. Also on information and belief, the Combined Fund admits that Plaintiff owned several subsidiary entities and maintained coal operations in West Virginia and Pennsylvania through its coal division.

2. The Combined Fund admits that Plaintiff created a wholly-owned subsidiary named Eastern Associated Coal Corp. ("EACC") in 1963. The Combined Fund is without sufficient knowledge to admit or deny the remaining allegations set forth in paragraph 2 of Plaintiff's Statement.

3. The Combined Fund is without sufficient knowledge to admit or deny the allegations set forth in paragraph 3 of Plaintiff's Statement.

4. The Combined Fund neither admits nor denies the allegations set forth in paragraph 4 of Plaintiff's Statement and instead relies on the documents set forth therein to speak for themselves.

5. The Combined Fund is without sufficient knowledge to admit or deny the allegations set forth in the first sentence of paragraph 5 of Plaintiff's Statement. The remaining allegations set forth in paragraph 5 are conclusions of law and therefore are neither admitted nor denied. Finally, the Combined Fund relies on the document cited in paragraph 5 to speak for itself.

6. The Combined Fund neither admits nor denies the allegations set forth in paragraph 6 of Plaintiff's Statement and instead relies on the documents cited therein to speak for themselves.

7. The Combined Fund neither admits nor denies the allegations set forth in paragraph 7 of Plaintiff's Statement and instead relies on the documents cited therein to speak for themselves.

8. The Combined Fund neither admits nor denies the allegations set forth in paragraph 8 of Plaintiff's Statement and

instead relies on the documents cited therein to speak for themselves.

9. On information and belief, the Combined Fund admits that Plaintiff, through its wholly-owned subsidiary, EACC, continued the mining operations that previously had been performed by Plaintiff's coal division. The Combined Fund is without sufficient knowledge to admit or deny the remaining allegations set forth in paragraph 9 of Plaintiff's Statement.

10. The Combined Fund neither admits nor denies the legal conclusion that EACC was Plaintiff's "successor". Moreover, the Combined Fund neither admits nor denies the remaining allegations set forth in paragraph 10 of Plaintiff's Statement and instead relies on the documents cited therein to speak for themselves.

11. The Combined Fund neither admits nor denies the allegations set forth in paragraph 11 of Plaintiff's Statement and instead relies on the documents cited therein to speak for themselves.

12. The allegations set forth in the first sentence of paragraph 12 of Plaintiff's Statement are legal conclusions to which no response is required. The Combined Fund is without sufficient knowledge to admit or deny the remaining allegations set forth in paragraph 12.

13. The Combined Fund is without sufficient knowledge to admit or deny the remaining allegations set forth in paragraph 13 of Plaintiff's Statement.

14. The Combined Fund is without sufficient knowledge to admit or deny the allegations set forth in paragraph 14 of Plaintiff's Statement.

15. The allegations set forth in the first sentence of paragraph 15 of Plaintiff's Statement are legal conclusions to which no response is required. The Combined Fund neither admits nor denies the remaining allegations set forth in

paragraph 15 and instead relies on the document cited therein to speak for itself.

16. The Combined Fund admits that EACC was signatory to a series of successive collective bargaining agreements with the United Mine Workers of America that obligated it to pay contributions to the United Mine Workers of America Welfare and Retirement Fund of 1950. The remaining allegations set forth in paragraph 16 of Plaintiff's Statement are legal conclusions to which no response is required.

17. The characterization that EACC was Plaintiff's "successor" is a legal conclusion to which no response is required. The Combined Fund neither admits nor denies the remaining allegations set forth in paragraph 17 of Plaintiff's Statement and instead relies on the documents cited therein to speak for themselves.

18. The Combined Fund is without sufficient knowledge to admit or deny the allegations set forth in paragraph 18 of Plaintiff's Statement.

19. On information and belief, the Combined Fund admits that Plaintiff currently owns Boston Gas, Midland Enterprises, Inc., and WaterPro Supplies Corporation. The Combined Fund is without sufficient knowledge to admit or deny the remaining allegations set forth in paragraph 19 of Plaintiff's Statement.

20. On information and belief, the Combined Fund admits the allegations set forth in the first sentence of paragraph 20 of Plaintiff's Statement. The allegations set forth in the second sentence of paragraph 20 are legal conclusions to which no response is required.

21. The Combined Fund is without sufficient knowledge to admit or deny the allegations set forth in paragraph 21 of Plaintiff's Statement.

22. The allegations set forth in paragraph 22 of Plaintiff's Statement concerning the responsibility of Eastern and EACC towards their retirees are legal conclusions to which no response

is required. The Combined Fund is without sufficient knowledge to admit or deny the remaining allegations set forth in paragraph 22.

23. The Combined Fund is without sufficient knowledge to admit or deny the allegations set forth in paragraph 23 of Plaintiff's Statements. Moreover, the Combined Fund relies upon the document cited therein to speak for itself.

24. The Combined Fund is without sufficient knowledge to admit or deny the allegations set forth in the first sentence of paragraph 24 of Plaintiff's Complaint. The Combined Fund admits the remaining allegations set forth in paragraph 24.

25. The Combined Fund admits the allegations set forth in paragraph 25 of Plaintiff's Statement.

26. The Combined Fund admits that the welfare and retirement fund created by the Krug-Lewis Agreement, known as the UMWA Welfare and Retirement Fund of 1946 (the 1946 W&R Fund"), was intended to make "payments to miners, and their dependents and survivors, with respect to: (i) wage loss not otherwise compensated at all or adequately under the provisions of Federal or State law and resulting from sickness (temporary disability), permanent disability, death, or retirement, and (ii) other related welfare purposes, as determined by the trustees" of the 1946 W&R Fund." The Combined Fund also admits that the UMWA Medical and Hospital Fund was designed to "provide, or to arrange for the availability of, medical, hospital and related services for the miners and their dependents." The Combined Fund further states that, as set forth in the Krug-Lewis Agreement, the federal government and the UMWA expressly agreed to "coordinate the development of policies and working agreements necessary for the effective operation of each fund" so that "each fund [would], to the maximum degree practicable, operate to complement the other." The Combined Fund denies that the 1946 W&R Fund did not provide medical care benefits to beneficiaries. The 1946 W&R Fund became operational in or

about May, 1947. At that time, its board of trustees approved a $1.000.00 death benefit payable to the beneficiaries of each member of the UMWA who died on or after June 1, 1946. The first death benefit checks were issued to the families of miners killed in a mine explosion in Centralia, Illinois. The trustees also began developing a rehabilitation program to provide for the care and treatment of paraplegic and severely disabled miners, many of whom had received inadequate medical care. The trustees likewise began developing a medical care program to provide health and medical benefits to all active and retired UMWA miners and their dependents. In its nascent stage, this program consisted of the payment of disability and maintenance aid on a month-to-month basis to miners and their dependents in order to alleviate cases of acute distress until the Fund's pension and hospital and medical programs became fully operational.

27. The Combined Fund admits the allegations set forth in paragraph 27 of Plaintiff's Statement. The Combined Fund denies, however, any implication that the Medical and Hospital Fund provided benefits only to active miners and not to retirees.

28. The Combined Fund admits the allegations set forth in paragraph 28 of Plaintiff's Statement.

29. The Combined Fund denies the allegations as stated in paragraph 29 of Plaintiff's Statement. The Combined Fund states, however, that 1947 NBCWA required that the 1946 W&R Fund and the UMWA Medical and Hospital Fund be merged into a new multiemployer benefit fund (the "1947 W&R Fund"). Like its predecessors, the 1947 W&R Fund was established to make payments to UMWA miners and their dependents for a broad range of benefits. These benefits included the payment of medical and hospital expenses, pensions, compensation for work-related injuries or illnesses, death benefits, and disability benefits.

30. The Combined Fund neither admits nor denies the allegations set forth in paragraph 30 of Plaintiff's Statement and

instead relies on the documents cited therein to speak for themselves.

31. The Combined Fund neither admits nor denies the allegations set forth in paragraph 31 of Plaintiff's Statement and instead relies on the terms of the 1947 NBCWA to speak for themselves.

32. The Combined Fund neither admits nor denies the allegations set forth in the first two sentences of paragraph 32 of Plaintiff's Statement and instead relies on the terms of the 1947 NBCWA to speak for themselves. The allegations set forth in the third sentence of paragraph 32 are legal conclusions to which no response is required.

33. The Combined Fund neither admits nor denies the allegations set forth in paragraph 33 of Plaintiff's Statement and instead relies on the documents cited therein to speak for themselves. Moreover, no response is required to the legal conclusions set forth in paragraph 33.

34. The Combined Fund admits the allegations set forth in the first sentence of paragraph 34 of Plaintiff's Statement. The Combined Fund neither admits nor denies the remaining allegations set forth in paragraph 34 and instead relies on the terms of the 1948 NBCWA to speak for themselves.

35. The Combined Fund admits the allegations set forth in the first sentence of paragraph 35 of Plaintiff's Statement. The Combined Fund neither admits nor denies the remaining allegations set forth in paragraph 35 and instead relies on the terms of the 1950 NBCWA to speak for themselves.

36. The Combined Fund admits the allegations set forth in the first sentence of paragraph 36 of Plaintiff's statement. On information and belief, the Combined Fund admits the allegations set forth in the second sentence of paragraph 36. The Combined Fund neither admits nor denies the allegations set forth in the third sentence of paragraph 36 and instead relies on

the terms of the 1951 amendment to the 1950 NBCWA to speak for themselves.

37. The Combined Fund admits the allegations set forth in the first sentence of paragraph 37 of Plaintiff's Statement. The Combined Fund neither admits nor denies the allegations set forth in the second sentence of paragraph 37 and instead relies upon the documents cited therein to speak for themselves. Finally, although on information and belief the Combined Fund admits that Plaintiff was not directly signatory to the terms of an NBCWA after 1965, the allegation that it was not signatory to any NBCWAs subsequent to that date through its 100% ownership of EACC, is a legal conclusion to which no response is required.

38. The Combined Fund admits that the UMWA and BCOA entered into successor NBCWAs in 1966, 1968 and 1971. The Combined Fund neither admits nor denies the allegations set forth in paragraph 38 of Plaintiff's Statement concerning the scope and extent of health and medical coverage set forth in those agreements and instead relies upon the terms of those agreements to speak for themselves. The remaining allegations set forth in paragraph 38 are legal conclusions to which no response is required.

39. The Combined Fund denies the allegations set forth in paragraph 39 of Plaintiff's Statement. As the Coal Commission and several federal courts have found, NBCWA signatory employers fostered retired miners' and their dependents' legitimate expectations of lifetime health care as early as 1950. For example, Charles A. Owen, the coal operators' designated trustee of the 1950 W&R Fund informed the coal operators that were signatory to the 1950 NBCWA that the Fund provided for the payment of "Hospitalization, Surgical and Medical Care for mine worker [sic], including pensioners and dependents during his life, without limit as to duration[.]" C.F. Exh. 3. (emphasis

supplied) [RA 1972]*. Likewise, in a 1953 speech, Joseph E. Moody, the president of the Southern Coal Producers Association, acknowledged that the beneficiaries of the 1950 W&R Fund had been1 "promised" and had "grown accustomed to" receiving the benefits provided by the 1950 W&R Fund. C.F. Exh. 4 [RA 2000].

Similarly, federal courts consistently have held that the UMWA retirees are entitled to lifetime health benefits. For example, in United Mine Workers of America v. Nobel, 720 F. Supp. 1169 (W.D. Pa. 1989), aff'd without opinion, 902 F.2d 1558 (3d Cir. 1990), cert. denied, 499 U.S. 904 (1991), the court held that:

> The language of the plan benefits contained in the past five collective bargaining agreements between the UMWA and the BCOA, providing that a pensioner 'will be entitled to a health services card for life,' together with the 25-year history of lifetime benefits prior to 1974, and the testimony of the parties of record establish that the parties intended to provide health benefits to the individual plaintiffs for life. We find that the language confers a right to benefits for the lifetime of the pensioner.

Id. at 1178 (emphasis added). The court in Nobel also found that

> [p]ension benefits for retired miners were provided beginning in 1947, under the previous trust, and health benefits were provided to retired miners beginning no later than 1950. The pension and health benefits for retired miners were provided throughout the life of the miner. The eligibility of the retired miner to receive pension and health benefits from the 1950 Fund was not affected by whether the last employer

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* **[Petitioner's Note**: supplementary citations have been added to this Statement of Facts to allow the Court to cross-reference the materials to the Record Appendix prepared for the First Circuit. Such citations appear as "[RA __]".]

ceased operations, went out of business, or failed to become signatory to successor agreements.

Id. at 1173 (emphasis supplied). See also District 29, United Mine Workers of America v. United Mine Workers of America 1974 Benefit Plan & Trust, 826 F.2d 280, 282 (4th Cir. 1987), cert. denied, 485 U.S. 935 (1988) ("we agree with the district court's conclusion that the intention of the parties in providing for retirement health benefits was to guarantee their provision for life."); In Re Chateaugay Corp., 945 F.2d 1205, 1210 (2d Cir. 1991), cert. denied, ___U.S. ___, 112 S. Ct. 1167 (1992) ("the retired employees are guaranteed the provision of health benefits for life under the collective bargaining agreement"); Barrick Gold, 823 F. Supp. at 1402; LTV, 163 B.R. 960.

40. The Combined Fund neither admits nor denies the allegations set forth in paragraph 40 of Plaintiff's Statement and instead relies upon the terms of the document cited therein to speak for themselves.

41. The Combined Fund neither admits nor denies the allegations set forth in paragraph 41 of Plaintiff's Statement and instead relies upon the terms of the documents cited therein to speak for themselves.

42. The Combined Fund denies the allegations set forth in the first sentence of paragraph 42 of Plaintiff's Statement. See Response to Paragraph 39, above. The Combined Fund neither admits nor denies the remaining allegations set forth in paragraph 42 and instead relies on the documents cited therein to speak for themselves.

43. The Combined Fund neither admits nor denies the allegations set forth in paragraph 43 of Plaintiff's Statement and instead relies upon the terms of the documents cited therein to speak for themselves.

44. The Combined Fund neither admits nor denies the allegations set forth in paragraph 44 of Plaintiff's Statement and

instead relies upon the documents cited therein to speak for themselves.

45. The Combined Fund neither admits nor denies the allegations set forth in paragraph 45 of Plaintiff's Statement and instead relies upon the documents cited therein to speak for themselves.

46-55. The Combined Fund neither admits nor denies the allegations set forth in paragraphs 46 through 55 of Plaintiff's Statement and instead relies upon the documents cited therein to speak for themselves. The Combined Fund notes, however, that as the court stated in Templeton v. Shalala, No. TH 93-158-C-TH (S.D. Ind. April 4, 1995), the "1950 UMWA Welfare and Retirement Fund . . . provided a comprehensive health benefits package covering unlimited hospitalization, out-patient treatment and rehabilitation expenses." Slip. Op. at 34. The court further noted that those coverage provisions "do not differ markedly from the benefits currently provided to Combined Fund beneficiaries." Id.

56. The Combined Fund denies the allegations set forth in paragraph 56 of Plaintiff's Statement. See Responses to paragraphs 39 and 46-55, above.

57. The Combined Fund admits that the UMWA and BCOA entered into a new NBCWA in 1974. The Combined Fund neither admits nor denies the remaining allegations set forth in paragraph 57 of Plaintiff's Statement and instead relies upon the terms of the 1974 NBCWA to speak for themselves.

58. The Combined Fund neither admits nor denies the allegations set forth in the first, second, fourth, and fifth sentences of paragraph 58 of Plaintiff's Statement and instead relies upon the terms of the 1974 NBCWA to speak for themselves. Although the Combined Fund admits that EACC was a signatory to the 1974 NBCWA, the allegation concerning Plaintiff's status as a signatory to the NPCWA is a legal conclusion to which no response is required.

59. The Combined Fund denies that financial mismanagement of the 1950 W&R Fund led to a crisis in the UMWA multiemployer health care system. The Combined Fund admits that a combination of demographic and economic factors adversely affected the financial stability of that system in the 1970s. The Combined Fund is without sufficient knowledge to admit or deny the allegation that these were the only factors that prompted the UMWA and BCOA to restructure the system in 1978.

60. The Combined Fund denies the allegations set forth in the first sentence of paragraph 60 of Plaintiff's Statement. The Combined Fund neither admits nor denies the remaining allegations set forth in paragraph 60 and instead relies upon the court decisions cited therein to speak for themselves.

61. The Combined Fund admits that the UMWA and BCOA entered into a new NBCWA in 1978. The Combined Fund neither admits nor denies the remaining allegations set forth in paragraph 61 of Plaintiff's Statement and instead relies upon the terms of the 1978 NBCWA to speak for themselves.

62. The Combined Fund neither admits nor denies the allegations set forth in paragraph 62 of Plaintiff's Statement and instead relies upon the documents cited therein to speak for themselves.

63. The Combined Fund neither admits nor denies the allegations set forth in paragraph 63 of Plaintiff's Statement and instead relies upon the terms of the 1978 NBCWA to speak for themselves.

64. The Combined Fund admits that the continued provision of health care benefits to retired miners and their dependents through the UMWA multiemployer health care system for retired miners was severely jeopardized in the 1980s. The Combined Fund neither admits nor denies the remaining allegations set forth in paragraph 64 of Plaintiff's Statement and instead relies upon the court decisions cited therein to speak for themselves.

65. The Combined Fund admits the allegations set forth in paragraph 65 of Plaintiff's Statement.

66. The Combined Fund admits that the UMWA and BCOA entered into a new NBCWA in 1988. The Combined Fund neither admits nor denies the remaining allegations set forth in paragraph 66 of Plaintiff's Statement and instead relies upon the documents cited therein to speak for themselves.

67. The Combined Fund admits that the funding crisis in the UMWA multiemployer health care system for retired miners and their dependents continued into the 1990s. The Combined Fund denies that the benefits provided to retired miners and their dependents were "first mandated" in the 1974 and 1978 NBCWAs. See Response to paragraph 39, above. The Combined Fund admits that the funding of retiree health care benefits was an issue in a labor dispute between the Pittston Coal Group of companies and the UMWA.

68. The Combined Fund admits that Secretary of Labor Elizabeth Dole created the Coal Commission. The Combined Fund neither admits nor denies the remaining allegations set forth in paragraph 68 of Plaintiff's Statement and instead relies upon the terms of the Coal Commission Report and the comments of the individual members of the Coal Commission to speak for themselves.

69. The Combined Fund admits that the Coal Commission recommended two statutory approaches to solve the crisis that was threatening the continued existence of the UMWA multi-employer health care system for retired miners and their dependents. Under the first approach, the Commission called for the creation of two new funds: (1) a quasi-governmental corporation financed by an industry-wide tax on all coal operators to finance the health care of UMWA orphan retirees; and (2) a private multiemployer fund financed by signatories to the 1978 and later NBCWAs to provide health care to UMWA retirees whose last employer remained in business. Coal

Commission Report, pp. 61-64. The second approach called for the creation of a single, private multiemployer plan to provide health benefits to orphan retirees. To produce the revenue that the first approach would have generated through an industry-wide tax, the second approach contained a financing scheme that imposed liability not just upon employers that signed the 1978 or a later NBCWA, but upon all employers and their related business entities that were, at one time, signatory to one or more NBCWAs:

> Instead of imposing a new tax on all coal operators and establishing an agency of the federal government, this plan seeks additional revenues from a broadened base of current and past signatories to the contracts, establishing and providing revenues for the Benefit Funds. Past obligations would be defined as those arising from firms once signatory who may be identified through a chain of succession to a current operator.

Id. at 65 (emphasis supplied); see also id. at 67.

70. The Combined Fund admits that after the Coal Commission issued its report and recommendations, Congress conducted its own examination of the crisis that was threatening the UMWA multiemployer health care system for retired miners and their dependents. The Combined Fund neither admits nor denies the remaining allegations set forth in paragraph 70 of Plaintiff's Statement and instead relies upon the legislative history of the Coal Act to speak for itself.

71. The Combined Fund admits that the Coal Act was passed by Congress as part of the Comprehensive Energy Policy Act of 1992, Pub.L. No. 102-486, 106 Stat. 2776. The Combined Fund neither admits nor denies the remaining allegations set forth in paragraph 71 of Plaintiff's Statement and instead relies upon the provisions of the Coal Act to speak for themselves.

72. The Combined Fund neither admits nor denies the allegations set forth in paragraph 72 of Plaintiff's Statement and instead relies upon the legislative history of the Coal Act to

speak for itself. The Combined Fund denies Plaintiff's assertion that Congress enacted the Coal Act under a quote "mistaken assumption. "The Combined Fund notes that, as the Coal Commission and several federal courts have found, signatories to each NBCWA since 1946 have fostered UMWA retirees' and their dependents' legitimate expectations of lifetime health benefits. See Response to paragraph 39, above.

73-77. The Combined Fund neither admits nor denies the allegations set forth in paragraphs 73 through 77 of Plaintiff's Statement and instead relies upon the provisions of the Coal Act to speak for themselves.

78. The Combined Fund neither admits nor denies the allegations set forth in paragraph 78 of Plaintiff's Statement and instead relies upon the provisions set forth in the federal budget to speak for themselves.

79. The Combined Fund denies the allegations set forth in paragraph 79 of Plaintiff's Statement, except that the Combined Fund admits that EACC was a signatory to the 1974, 1978, and 1988 NBCWAs. See Response to paragraph 39.

80. The Combined Fund neither admits nor denies the allegations set forth in paragraph 80 of Plaintiff's Statement and instead relies upon the documents cited therein to speak for themselves.

81. The allegations set forth in paragraph 81 of Plaintiff's Statement concerning EACC's status as the "successor" of Plaintiff are legal conclusions to which no response is required. On information and belief, the Combined Fund admits that by 1966, Plaintiff had already contributed more than $50 million to the 1950 W&R Fund.

82. The Combined Fund admits that Plaintiff, through its wholly-owned subsidiary, EACC, continued to derive profits from its bituminous coal mining operations after 1966. The Combined Fund also admits that Plaintiff, through EACC,

continued to make contributions to the 1950 W&R Fund after 1966.

83. The Combined Fund neither admits nor denies the allegations set forth in paragraph 83 of Plaintiff's Statement and instead relies on the documents cited therein to speak for themselves.

84. The Combined Fund neither admits nor denies the allegations set forth in paragraph 84 of Plaintiff's Statement and instead relies on the document cited therein to speak for itself.

85. The Combined Fund neither admits nor denies the allegations set forth in paragraph 85 of Plaintiff's Statement and instead relies on the documents cited therein to speak for themselves.

86-97. The Combined Fund neither admits nor denies the allegations set forth in paragraphs 86 through 97 of Plaintiff's Statement and instead relies on the documents cited therein to speak for themselves.

Respectfully submitted,

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April 14, 1995

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

(Caption Omitted)

STATEMENT OF MATERIAL FACTS IN DISPUTE WHICH PRECLUDE THE ALLOWANCE OF THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THE RETIREE CHALLENGED BY EASTERN DID NOT WORK FOR EACC

1. In this action, Eastern Enterprises ("Eastern") challenges the assignment of Mr. Samuel E. East and his wife, Josephine East, two of the beneficiaries assigned to Eastern pursuant to the Coal Act, 26 U.S.C. §§9701-9722. See correspondence from the Social Security Administration dated January 30, 1995, to counsel for Eastern Enterprises, a copy of which was attached at tab 8 to Volume I of Eastern's exhibits in support of its motion for summary judgment [RA 602-03]. It appears that all of the beneficiaries assigned to Eastern are or relate to mine workers who retired before January 1, 1966, which according to Eastern is the date EACC gained its independence from Eastern. See the list of 767 beneficiaries assigned to Eastern, which was submitted by the plaintiff in connection with its request for an injunction and the affidavit of Ronald E. Osborn ("Osborn affidavit") at ¶7 [RA 2120].[1]

2. Samuel Eugene East was hired by Eastern, (then known as Eastern Gas & Fuel Associates), on January 2, 1934. He was discharged by Eastern after 26 years of service, as a hand loader and cutting machine operator, on September 28, 1960, at least

[1] The affidavits of Ronald E. Osborn, Thomas R. Gallagher, Kyu Lee, and Robert H. Quenon are attached to this Statement at tabs 1-4, respectively. [**Petitioner's Note**: supplementary citations have been added to this Statement of Facts to allow the Court to cross-reference the materials to the Record Appendix prepared for the First Circuit. Such citations appear as "[RA __]".]

three years before Eastern Associated Coal Corp. ("EACC") came into existence. See the affidavit of Thomas R. Gallagher ("Gallagher affidavit"), submitted with this opposition, at ¶14 [RA 2173].

Most of Mr. East's employment with Eastern was at a mine known as Stotesbury No. 11 which was in operation from 1941 through September 1967, at which point it was closed. Gallagher affidavit at ¶¶4 & 14 [RA 2171, 2173].

4. Subsequently, Mr. East worked for the CC&L Coal Company from July 20, 1962 to March 15, 1963. On or about March 15, 1963 CC&L Coal Company changed its name to the Calvert Coal Company. Although the company changed its name, Mr. East continued to work for the company until January 9, 1967. CC&L Coal Company/Calvert Coal Company was a NBCWA signatory employer during the period May 1, 1959 through December 5, 1977, at which time it went out of business. See the affidavit of Kyu Lee ("Lee affidavit") at ¶6 [RA 2308].

5. Mr. East was never employed by EACC. Gallagher affidavit at ¶14 [RA 2173].

6. Shortly after leaving employment with the Calvert Coal Company, Mr. East retired and applied for benefits from the UMWA Welfare and Retirement Fund of 1950 ("1950 W&R Fund"). Lee affidavit at ¶7 [RA 2308].

7. Mr. East was a beneficiary of the UMWA Welfare and Retirement Funds of 1946 and 1947, and the 1950 W&R Fund from those plans' inception, and received health benefits from them while he was working for Eastern, the CC&L Coal Company and the Calvert Coal Company. After his retirement in 1967, he continued to be a beneficiary of the 1950 W&R Fund's successor, the 1950 Benefit Plan. Lee affidavit at ¶8 [RA 2308].

8. Mr. East's spouse was a beneficiary of the 1950 Benefit Plan on July 20, 1992 and thereafter became a beneficiary of the Combined Fund. Lee affidavit at ¶9 [RA 2308].

EACC HAS BEEN ASSIGNED ITS OWN RETIREES UNDER THE COAL ACT

9. Pursuant to the Coal Act, EACC itself has been assigned its own retirees and their dependents. The Social Security Administration, as of October 1, 1994, assigned 1,860 beneficiaries to EACC.[2] Between October 1, 1994, and September 30, 1995, EACC will have paid premiums to the Combined Benefit Fund pursuant to the Coal Act of more than $4,000,000.00. Osborn affidavit at ¶3-5 [RA 2119].

10. Among the beneficiaries assigned to EACC under the clear language of the Coal Act are people who may have worked for Eastern, or other coal companies, then subsequently worked for EACC, which was their last employer before they retired. Osborn affidavit at ¶6 [RA 2119].

EASTERN EXERCISED SIGNIFICANT CONTROL OVER EACC EVEN AFTER 1966

11. Eastern was a signatory to coal wage agreements from at least 1942. See tab 6, exhibit "B" in Volume I of Eastern's exhibits [RA 593].

12. Under various coal wage agreements, including the 1950 NBCWA, Eastern was required to pay a certain amount of money per each ton of coal produced into the United Mine Workers of America Welfare and Retirement Fund of 1950 ("Fund"). The per ton contribution increased over the years through various amendments to the 1950 NBCWA.

13. Between 1942 and 1965, Eastern closed at least 20 out of approximately 63 mines. Gallagher affidavit at ¶4 [RA 2171].

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[2] Some of those assignments have been challenged by EACC. Osborne affidavit at ¶3 [RA 2119].

14. Eastern created EACC as a wholly owned subsidiary beginning in 1963. Gallagher affidavit at ¶3 [RA 2171].

15. From 1963 through 1965, Eastern transferred certain assets of its coal division to EACC in exchange for 100% of EACC's stock.[3] A legal opinion dated November 7, 1962, drafted by Eastern's then general counsel, Eli Goldston, characterizes the anticipated creation of what ultimately would be called EACC as a transfer of coal division assets. Gallagher affidavit at ¶5 [RA 2171].

EACC DID NOT ASSUME ANY OF EASTERN'S COAL ACT OBLIGATIONS

16. After it created EACC as a wholly owned subsidiary, Eastern retained substantial control over EACC's operations and profits. See Gallagher affidavit at ¶¶7-12 [RA 2172-73]. Evidence of Eastern's control over EACC includes:

(a) Eastern continued to reap 100% of the profits of the coal mining operations through dividends from EACC. In 1986 alone, Eastern received a dividend from EACC of $24,162,854. Gallagher affidavit at ¶¶8 & 9 [RA 2172].

a. EACC's board continued Eastern's practice of voting monthly allowances to coal division employees who had retired prior to the creation of Eastern's pension plan; but, Eastern, through a Retirement Committee, directed EACC to vote for the monthly allowances as determined by Eastern. Gallagher affidavit at ¶10 [RA 2172].

b. Even Camp Lightfoot remained within the sphere of Eastern's influence after the creation of EACC. When the camp's only full-time employee, Kenneth Brookman, sought pension benefits in 1984, the issue was presented to Jim Mettling, an Eastern employee for

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[3] On or about May 13, 1980, Eastern created Coal Properties Corp. ("CPC") as its wholly owned subsidiary. On May 26, 1980, CPC became the owner of 100% of EACC's stock. Gallagher affidavit at ¶3 [RA 2171].

final determination. See Gallagher affidavit at ¶11 [RA 2172-73].

17. The "evidence" upon which Eastern relies in alleging that EACC represented itself as a successor to Eastern, and as having assumed all of Eastern's liabilities, consists of statements made by Eastern itself or by EACC during a time that it was under Eastern's substantial control. See Plaintiff's statement of facts at ¶¶5-8 [RA 117-18].

18. During the period from 1942-1965, Eastern profited as a result, in part, of the labors of its UMWA members, and from 1966-1987, Eastern profited, through payments by EACC of 100% of its net profits to Eastern, as a result, in part, of the labors of UMWA members. Gallagher affidavit at ¶¶8 & 9 [RA 2172].

19. There is no written or other agreement in existence in which EACC agreed to assume from EACC agreed to assume from Eastern: (a) liabilities under laws not enacted at the time of the transfer of assets to EACC; (b) unforeseeable liabilities; (c) liabilities not in existence at the time of the asset transfer to EACC; or (d) any statutorily created liabilities, such as those imposed by the Coal Act, for lifetime health benefits for retirees and their dependents. See Gallagher affidavit at ¶6 [RA 2171-72].

20. The "interim agreement" between Eastern and EACC does not provide for the transfer of all liabilities to EACC, nor does it provide for any indemnification of Eastern by EACC for such liabilities. See the interim agreement, a copy of which was attached at tab 5, exhibit "C" to Volume I of Eastern's summary judgment exhibits [RA 259-61].

PEABODY DID NOT ASSUME ANY OF EASTERN'S COAL ACT LIABILITIES

21. In the Stock Exchange Agreement through which Peabody Holding Co., Inc. ("Peabody") acquired EACC (the "Stock Exchange Agreement"), Peabody did not agree to assume from Eastern: (a) liabilities under laws not enacted at the time of the Stock Exchange Agreement; (b) unforeseeable liabilities; (c) liabilities not in existence at the time of the Stock Exchange Agreement; or (d) any statutorily created liabilities, such as those imposed by the Coal Act, for lifetime health benefits for retirees and their dependents. See the affidavit of Robert H. Quenon ("Quenon affidavit") at ¶4 [RA 2304]; Gallagher affidavit at ¶13 [RA 2173].

22. To the contrary, the Stock Exchange Agreement was explicit in Section 5(c) that, "CPC, EACC or the other Subsidiaries of CPC shall be liable, in respect of the class of individuals hereinafter specified, for payments of premiums and benefits, and for the reimbursement of benefit costs, under the plans listed on Schedule 5(c) hereto ...." The class of individuals specified were persons who had "retired or otherwise ceased to be employed by CPC or any of its Subsidiaries" (including EACC). This class of individuals did not include former Eastern retirees who had never worked for CPC or EACC. Schedule 5(c) also makes reference only to a "Benefit Plan for UMWA Represented Employees of EACC and Subs" – not for Eastern employees who had never worked for EACC. Quenon affidavit at ¶5 [RA 2304]; Gallagher affidavit at ¶13 [RA 2173] and exhibit "G" [RA 2206].

23. In fact, in Section 2(k) of the Agreement Eastern represented, warranted and covenanted, in pertinent part:

> "Except as and to the extent [of] ... liabilities and obligations incurred in connection with and specifically contemplated by this Agreement, neither CPC nor any Subsidiary or Affiliate of CPC [including EACC] has incurred any liabilities

or obligations of any nature (whether absolute, accrued, contingent or otherwise) which ... are material to CPC and such Subsidiaries and Affiliates taken as a whole .... "

Quenon affidavit at ¶6 [RA 2304]; Gallagher affidavit at ¶13 [RA 2173] and exhibit "G" [RA 2220].

24. As of July 20, 1992, EACC, Peabody, and Coal Properties Corp. were not under common corporate or management control with Eastern. Gallagher affidavit at ¶15 [RA 2173].

Partial Listing of Miners and Other Beneficiaries Assigned to Eastern by SSA[1]

Miners and other Beneficiaries	SSN	Dates Miners Employed
*[2]Chernushin, Anthony J.	175-18-8207	07/56-06/57
* Smith, Theodore F.	191-10-8654	01/46-03/46
		07/46-12/49
		04/50-06/50
		07/51-09/55
		04/56-06/54
Smith, Hazel M.	199-30-4266	
* Storey, John W.	191-10-8710	01/46-12/47
		07/48-06/51
		01/52-03/52
Storey, Arlene	161-38-5530	
* Tomasky, Mike	193-05-5028	01/46-03/48
Tomasky, Pauline	235-44-4577	
* Koziol, John A.	193-05-5980	07/56-06/59
Koziol, Anna		
* Malek, George	193-07-7210	02/46-07/59
Malek, Pauline	160-20-8279	
* McHenry, Charles W.	193-09-6050	01/57-09/59
		04/60-06/60
McHenry, Martha W.	270-56-5991	
* Keener, Lawrence R.	193-10-7965	7/52-12/52
Keener, Ethel	179-28-4744	

[1] This list was tabulated from two letters from SSA to Eastern, RA 2121-69, that were attached to the Affidavit of Ronald E. Osborn, April 13, 1995, RA 2118-20, which was an exhibit to Third Party Defendants' Statement of Material Facts in Dispute which Preclude the Allowance of the Plaintiff's Motion for Summary Judgment.

[2] Asterisk "*" denotes miners, the other individuals listed are the miners' eligible relatives assigned to Eastern.

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Brumley, Sank S.	211-01-5387	4/57-12/58
		4/58-6/58
		10/59-12/59
		4/60-6/60
		12/60-6/61
Brumley, Lena	160-36-1532	
* Chryczyk, Jacob	211-12-7182	07/47-09/49
		04/50-09/51
		07/52-09/52
* Thompson, James G.	229-07-6180	07/48-06/58
		01/59-09/65
Thompson, Lottie	224-28-4197	
* Rivers, Walter D.	231-12-7473	01/47-09/48
		01/49-12/53
Rivers, Beulah	232-92-7236	
* Ackelson, George E.	233-07-5848	07/54-03/61
Ackelson, Phoebe	481-38-5187	
* Hinte, Chris	233-07-6090	1/46-9/46
		1/47-9/47
		1/48-9/48
		1/49-9/50
		1/51-9/52
Hinte, Bertha	233-96-9536	
* Goley, Charles R.	233-07-8782	7/49-9/52
		1/53-9/53
		1/54-6/58
		10/58-6/59
		10/59-6/62
Goley, Nettie	232-92-7068	
* Anthony, Milton L.	233-07-8951	01/46-06/59
Anthony, Corrine		
* Herron, Arthur	233-10-5054	07/47-06/51
Herron, Juanita	232-42-8663	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Johns, Joseph M.	233-10-6044	10/48-06/53
Johns, Elizabeth M.	362-40-8077	
* Adams, Austin N.	233-14-7217	01/46-03/54
		07/54-09/54
		01/55-07/60
Adams, Leola	236-38-8942	
* Southern, Orville	233-28-8039	1/49-09/51
Southern, Helen	234-24-6326	
* Nutter, Joseph W.	235-09-5901	07/47-12/47
		1/48-9/48
		1/49-9/50
		7/51-9/51
Nutter, Betty	217-22-3039	
* Smith, Clyde W.	235-09-6246	07/56-09/60
Smith, Glee	235-44-5633	
* Humphrey, Howard	235-09-8535	01/46-06/49
		10/49-09/50
		07/51-07/51
Humphrey, Adgie	232-96-7783	
* Novak, John	235-10-6816	1/51-12/53
		7/54-9/56
		1/57-9/57
		1/58-3/58
Novak, Anna	233-08-3538	
* Castle, Curtis	403-10-5944	04/48-06/58
* Tononi, Frederick	167-07-8068	01/57-12/64
Tononi, Helen	170-36-4898	
* Crum, Rosco H.	177-01-8541	04/48-06/48
Crum, Florence C.	199-26-8952	
* Allen, D.	233-22-8844	01/46-10/47
Allen, Hazel		
* Robinson, Byrd	235-05-5343	4/46-12/47

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Jennings, Luther W.	235-07-5414	10/47-6/48
		7/49-9/49
Jennings, Polly	234-38-6652	
* Horn, Edgar	405-07-6332	4/51-12/51
		7/52-9/52
Horn, Gladys	232-34-8567	
* Walkovich, John J.	175-18-7256	1/46-1/62
Walkovich, Josephine	165-22-1508	
* Markalinski, Philip	177-01-8023	10/46-12/46
* Smith, Carl F.	191-05-8331	7/48-6/62
		4/63-6/63
Smith, Gwyenne	165-24-8559	
* Fedpre, Andrew J.	191-07-8760	01/46-06/58
Fedore, Bertha		
* Lasko, Steve	191-10-5187	10/48-06/49
Lasko, Dorothy M.	190-26-0021	
Lasko, Crissey L.	201-60-8680	
Lasko, Beth A.	166-62-4434	
* Earnest, Kenneth D.	191-10-8734	1/46-9/47
		1/49-6/58
Earnest, Helen	194-01-2789	
* Smith, William H.	193-09-6376	7/51-9/51
* Stahl, Charles L.	209-01-5363	01/46-12/58
Stahl, Elsie	161-36-0472	
* Shedlock, Steve G.	209-01-7103	7/46-9/49
		4/50-6/50
		10/51-12/51
* Shook, John J.	209-03-6308	7/56-12/65
Shook, Elizabeth	168-52-3252	
* Simpson, James W.	209-05-5197	1/46-12/50
Simpson, Florence		

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Shaffer, Charles S.	209-09-8266	07/49-09/51
		04/52-06/52
		01/53-06/53
Shaffer, Elda	208-34-2822	
* Soltis, John	209-10-7130	07/46-06/63
Soltis, Helen	162-12-5202	
* Shoff, Lincoln A.	211-01-7713	1/46-12/62
Shoff, Margaret	133-16-2948	
* Long, Charles R.	211-01-7717	1/46-6/58
Long, Nellie M.	170-26-5182	
* McCreary, Mason F.	211-05-7891	01/46-12/46
		04/47-06/47
		04/50-06/52
McCreary, Mary	207-34-1121	
* Cole, Noah	223-10-6993	01/52-06/65
Cole, Della	403-52-2084	
* Smith, James E.	225-05-5333	01/46-06/62
Smith, Beulah	226-32-7430	
* Clark, Clyde	227-07-6474	01/46-06/53
Clark, Inas		
* Conley, Ernest	231-05-7991	07/48-09/48
		01/49-06/65
Conley, Ruth	234-32-5231	
* Harrah, Everett	233-07-5418	7/46-6/54
Harrah, Wilda	275-26-6120	
* Hawley, John F.	233-07-5507	1/46-6/62
Hawley, Macie	232-96-7324	
* Vance, Theron	233-07-7284	1/46-9/47
		1/48-9/48
		1/49-9/51
		1/52-9/52
		1/53-9/53
Vance, Beulah	232-34-5874	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Vitsos, Steve J.	233-07-8852	1/48-6/52
Vitsos, Rebecca	234-62-6909	
* Detamore, Delbert	233-07-8868	1/46-9/50
		7/51-9/51
Detamore, Mabel	236-38-5889	
* Harris, Clarence E.	233-07-8911	1/46-12/61
		4/62-6/62
Harris, Ruth P.	422-32-0522	
* Younger, Albert E.	233-10-5740	1/46-6/47
		04/48-06/48
		01/49-06/56
		10/57-03/58
Younger, Evelyn L.	236-72-7712	
* Mollette, Ali	233-12-5618	1/47-3/47
Mollette, Ada	407-22-6521	
* Nelson, Albert	233-12-6553	12/46-9/48
		1/49-12/53
		7/56-9/57
		1/58-9/61
		1/62-6/62
Nelson, Eunice	232-52-8032	
Logwood, Michael		
* Webb, Lloyd B.	233-12-6871	1/50-6/53
		7/56-12/64
Webb, Genieve	235-46-1462	
* Hughes, Clarsnce C.	233-14-6496	1/52-03/59
Hughes, Angelee	300-24-3139	
* Akers, Wildia	233-14-6506	1/47-9/47
Akers, Stella	234-36-9559	
* Harless, Roy B.	233-14-6786	01/48-6/62
		01/63-6/63
		03/64-09/65
Harless, Doris	235-60-1777	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Lusk, Robert L.	233-14-6801	01/46-06/49
Lusk, Lillian	458-40-2951	
* Terry, Charles L.	233-14-8176	1/46-6/58
Terry, Jessie	236-36-0267	
* McClanahan, Ernest F.	233-16-5427	1/46-9/58
		1/59-9/59
		1/60-6/60
McClanahan, Hazel	221-16-0223	
* Wood, Millard	233-18-5000	01/46-12/48
		07/49-09/49
		01/51-09/69
Wood, Sylvia	232-70-4232	
* Thompson, William E.	233-18-5029	01/46-09/47
		04/48-09/60
Thompson, Ruth	234-56-6786	
* Cook, Kenneth E.	233-18-7036	1/46-9/48
		1/49-9/52
		4/53-6/53
Cook, Eleanor J.	235-05-0899	
* Ratliff, Bud J.	233-26-8857	1/46-12/46
		4/47-3/49
Ratliff, Iris	233-88-6533	
* Halsey, Woodrow	233-28-6701	01/46-03/48
		07/48-12/51
		04/52-09/57
		01/58-03/61
Halsey, Lucy	236-70-6623	
* Chambers, Josh R.	233-28-8139	01/46-06/53
		04/55-06/55
		10/55-12/63
		04/64-06/64
Chambers, Eliza	234-56-6448	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* White, Phillip	233-30-8556	1/46-3/58
		1/65-12/65
* Williams, Clarence	233-34-6212	01/47-06/47
Williams, Alice F.	235-70-5004	
* Vest, Fred C.	233-34-6265	10/48-12/48
		07/49-09/49
Vest, Claralee	235-30-6386	
* Greer, Leroy	233-38-7585	04/49-09/60
Greer, Juanita P.	233-42-0617	
* Moran, Calvin L.	233-38-7753	07/46-09/46
		04/47-06/48
		01/49-03/58
		01/59-06/62
		07/63-09/63
Moran, Margaret E.	234-46-0515	
* Haskett, Clarence L.	235-01-8441	1/48-3/51
		7/51-3/52
		7/54-9/54
Haskett, Helen	233-22-9169	
* Bailey, Guy C.	235-03-7685	1/51-6/53
		7/56-9/62
		4/63-6/63
Bailey, Blanche	233-96-7588	
* Tucker, James	235-03-7795	07/46-03/58
Tucker, Rosa	244-62-3700	
* McCormick, James O.	235-03-7807	01/46-12/46
		04/47-09/50
		04/51-06/51
McCormick, Sadie	232-96-9030	
* Vaughn, Buford	235-05-5307	01/46-03/58

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Leslie, Patrick A.	235-05-5320	01/48-03/48
		10/48-12/48
		07/49-09/49
Leslie, Edith	407-56-9386	
* Crews, F.	235-05-5345	01/46-09/47
* Norris, George E.	235-05-5457	1/46-9/48
		4/49-6/49
		7/50-3/58
Norris, Ruby	233-42-0468	
* Stafford, James I.	235-05-5472	9/48-6/49
Stafford, Zenith	232-52-7774	
* McKinney, Darst	235-05-5572	1/46-3/60
* Watkins, Earl S.	235-05-6158	4/48-6/48
		10/48-03/53
		10/55-12/55
Watkins, Flora M.	235-70-2472	
* Edwards, Lester G.	235-05-6974	07/48-12/52
* Delp, Kyle B.	235-05-7018	1/46-9/49
Delp, Jackie Jr. L.	233-15-4756	
* Fralin, Alex	235-05-7092	1/46-3/58
Fralin, Myrtle	233-64-9788	
* Kilbourne, Dempsey B.	235-05-7385	1/46-3/65
		7/65-9/65
Kilbourne, Florence	233-40-6599	
* Cumby, Clarence	235-05-7419	1/46-3/46
		1/47-3/47
* Philpott, Clair D.	235-05-8785	07/48-12/48
Philpott, Margaret L.	235-42-8066	
* Dolin, Wilburn	235-07-5053	4/46-6/47
		7/48-12/48
		4/49-6/49

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Dillard, Theodore R.	235-07-5063	1/46-9/57
		1/58-6/60
Dillard, Marion	235-86-2447	
Roberson, Yolanda L.	235-11-7255	
Roberson, Corey A.	236-23-8726	
* Wydo, Nick M.	235-07-5266	04/49-6/53
Wydo, Irene	233-50-1388	
* Coffey, Guy G.	235-07-5363	01/47-12/52
		04/53-06/53
Coffey, Lula	137-44-0103	
* Siskey, Ziggie	235-09-5248	07/46-09/46
		01/47-06/47
		01/48-03/48
		10/8-06/49
Siskey, Virginia	233-40-5633	
* Wade, Leonard E.	235-09-5410	7/47-9/48
		1/52-12/53
		4/54-12/54
		4/55-12/59
		7/60-3/62
Wade, Mary E.	233-36-9186	
* West, Cecil	235-09-5425	7/47-6/60
		6/61-6/62
West, Tressie	232-48-5976	
* Eubanks, Otho	235-09-6299	1/46-12/52
Eubanks, Grace A.	181-20-3509	
* Redden, Lovell M.	235-09-6343	10/47-12/47
Redden, Rema	233-38-3343	
Redden, Johnie D.		
* Lewis, Odell C.	235-09-6370	01/46-06/46
Lewis, Lana	233-38-8973	
* Avancini, Bill W.	235-09-6389	10/55-06/59
Avancini, Silvia	236-40-1626	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Bogle, James W.	235-09-7013	1/46-6/55
		7/56-9/56
* Woods, George	235-09-7253	7/47-6/51
Woods, Irma	281-22-4465	
* Hess, Ernest W.	235-09-7292	1/46-12/49
		4/50-12/52
Hess, Sylvia	236-54-3977	
* Huddleston, Charles M.	235-09-7420	1/46-9/47
		1/48-9/48
		1/49-9/49
		1/50-9/50
		1/51-9/51
Huddleston, Lucille	236-70-2539	
* Canterburry, Edward I.	235-09-7469	01/46-09/46
		01/47-09/47
		01/48-09/48
		01/49-06/60
Canterbury, Josie	233-54-7815	
* Martin, Melvin O.	235-09-7514	01/46-3/53
Martin, Carrie	235-56-7646	
* Perkins, Modia I.	235-09-7516	1/46-3/53
Perkins, Hazel V.	233-44-2358	
* Wilkerson, Steven	235-09-7525	7/48-3/53
Wilkerson, Esther	236-86-6266	
* Prather, Lewis	235-09-8462	01/46-09/50
		07/51-09/51
Prather, Nettie	232-90-8446	
* Roop, Carl E.	235-09-8541	7/46-9/46
		7/47-9/47
		1/48-6/54
Roop, Olive	233-96-8138	
* East, Samuel E.	235-10-5990	01/46-09/60
East, Josephine	352-18-1268	
* Boyd, Vernie A.	235-10-6263	07/49-09/60

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Johnson, Telford	235-10-6293	1/46-3/58
Johnson, Rosa	232-66-0383	
Johnson, Latosha T.	302-80-6051	
* Short, Avery M.	235-10-6671	10/47-09/50
		01/51-03/53
Short, Helen	267-64-2249	
* Bolling, Ernest L.	235-10-7538	04/47-06/53
		01/56-06/58
		10/58-12/62
Bolling, Mattie	291-26-0896	
Bolling, Alicia M.	235-02-4183	
* Holstein, Burley B.	235-10-7589	1/46-3/46
		1/51-6/55
		10/55-12/55
		7/56-9/56
Holstein, Lillian M.	233-64-9628	
* Humphrey, William R.	235-10-7713	1/46-6/47
Humphrey, Elizabeth C.	233-98-4238	
* Parsons, Earl	235-10-8110	1/46-6/55
		4/56-6/56
Parsons, Stollie	235-84-2819	
* Booth, Paul E.	235-10-8182	04/48-06/48
		01/55-06/58
* Matheny, Robert L.	235-10-8796	07/48-06/50
		10/50-06/53
Matheny, Martha	236-30-0084	
* Brooks, Robert L.	235-16-6447	01/47-03/47
Brooks, Annie	232-68-1238	
* Moore, Russell J.	235-16-7201	01/46-12/52
		10/53-03/60
Moore, Delphia	236-74-4918	
* Woodrum, Raymond L.	235-18-6033	01/46-09/50
Woodrum, Mary	236-66-6387	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Snyder, Lester L.	235-18-6494	1/46-6/49
		10/51-12/51
* Jones, Edd C.	235-18-6525	10/50-12/50
		07/51-09/51
Jones, Viola	235-68-1515	
* Kirby, Charles	235-22-8686	7/46-9/46
		7/51-9/51
		1/52-12/52
Kirby, Elsie	303-46-2896	
Kirby, Jennifer L.	232-31-1521	
* Stone, James M.	235-26-5159	01/46-06/58
Stone, Edna		
* Snuffer, Thomas L.	235-28-5682	01/46-03/46
		01/47-03/47
		07/47-06/53
		01/56-09/61
		04/62-06/62
Snuffer, Clara	234-46-0163	
* Gibson, Clifford H.	235-28-6858	01/51-09/53
		04/54-06/54
* Nelson, Eli Z.	235-28-7958	01/46-03/46
		01/47-03/47
Nelson, Joda	232-38-4088	
* Mitchell, Robert	235-30-6969	09/46-12/46
Mitchell, Barbara	235-86-9053	
Belcher, Robert		
Belcher, Bernard		
Belcher, David		
* Milan, John D.	235-30-7049	1/46-9/48
Milan, Beulah	235-44-2397	
* Cook, Howard	235-30-8708	1/46-12/52
		7/53-9/53
Cook, Lola	233-58-7488	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Johnson, Claude	235-34-7750	1/46-9/47
		1/48-9/48
		1/49-12/49
		4/50-9/53
		1/54-9/57
		1/58-12/58
		4/59-6/59
Johnson, Mary	235-38-1390	
* Colisino, Patsy	234-38-6098	01/48-9/49
		04/50-6/50
Colisino, Erma M.	234-54-4957	
* Brown, Willard	235-38-8190	07/46-09/46
		01/47-12/63
Brown, Zelma		
* Sturgill, John W.	235-38-8300	01/46-03/46
		07/47-12/65
Sturgill, Pauline	235-58-7632	
* Moreau, Joe H.	235-44-7619	10/48-12/48
Moreau, Anna	236-52-1187	
* Ashwood, Stanley B.	285-09-5175	01/46-12/57
		04/58-06/58
Ashwood, Ruth B.	287-22-1069	
* Sword, Spencer M.	403-01-6023	03/46-06/52
		12/52-09/53
Sword, Jesse	407-52-5975	
* Vicars, Oscar L.	403-01-6051	01/46-06/53
Vicars, Celia	404-76-2955	
* Hager, Joe	403-01-6056	04/46-06/52
		01/53-06/53
Hager, Essie	404-48-9482	
* Johnson, Jeff L.	403-01-6066	01/46-06/53
Johnson, Rissie	403-12-8853	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Little, Oscar	403-01-6073	1/46-9/46
		4/47-3/51
		10/51-6/52
Little, Bernice M.	401-40-7661	
* Harmon, Eugene H.	403-01-6315	01/46-06/53
Harmon, Oneida	404-32-0392	
* Damron, Wayne	403-01-6585	1/46-6/53
Damron, Chloie	402-88-5645	
* Gooden, Harold	403-01-6596	1/46-9/48
		1/49-6/53
Gooden, Myrtle	401-15-3180	
* Smith, Milford W.	403-01-8114	01/46-12/49
		07/50-09/50
* Phillips, John A.	402-05-5971	04/47-06/55
		07/56-09/56
		01/57-03/57
Phillips, Reba		
* Miller, John	403-05-7219	1/46-3/53
Miller, Stella		
* Tackett, Lonnie	403-09-5557	04/47-09/47
* Gooslin, Jesse	403-10-5607	01/57-09/57
Gooslin, Goldie		
* Blair, Sherman	403-16-6656	10/49-6/51
		10/51-6/53
		7/56-6/61
		4/62-6/62
Blair, Mary	402-52-8220	
* Jude, Luster	403-20-8239	01/47-03/47
		07/47-12/47
Jude, Mae		
Jude, Lisa		
* Hopkins, William	405-05-7922	07/48-06/49
		07/50-09/51
Hopkins, Dona	403-54-1374	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Rice, James	405-18-8988	08/51-09/51
		04/52-04/54
Rice, Francoise	524-68-1577	
* Scarberry, Estill	407-18-8062	07/52-06/59
Scarberry, Ethel	406-36-6425	
* Mullins, Junior	407-18-8525	1/46-9/53
Mullins, Tanie L.	402-98-7811	
* Isaac, William L.	407-28-7473	1/49-3/49
		10/49-6/51
		10/52-12/52
Isaac, Rosie		
* Caudill, Powers	407-38-8970	7/58-6/60
		10/60-12/62
Caudill, Elma		
* McCoy, Arthur D.	415-03-8167	1/49-3/49
		4/50-6/54
		10/54-12/54
* Welsh, James	235-03-8229	1/52-6/53
		7/54-9/54
* Jessup, Charles M.	235-05-5413	1/46-3/46
		7/46-6/53
		4/56-6/60
Jessup, Pauline	233-58-4595	
* Johnson, Buddy	235-09-8536	01/46-06/50
		01/51-06/52
		10/53-06/54
* Wilders, George R.	191-18-9238	6/46-12/65
Wilders, Dolores E.	164-28-8286	
* May, Russell	211-01-9406	01/46-05/46
		08/46-11/46
		02/47-05/47
		05/48-06/48
		10/48-08/50

Miners and other Beneficiaries	SSN	Dates Miners Employed
* McConnell, Ira W.	227-03-1093	3/48-9/56
		3/57-9/57
McConnell, Opal	235-46-1088	
* Pannell, Walker R.	227-05-2472	12/46-9/47
		3/48-9/48
Pannell, Rena	243-32-9845	
* Hobson, Edgar	229-07-4108	6/46-9/47
		6/48-3/49
		9/49-12/49
		9/50-3/51
		9/51-3/52
		9/52-12/52
Hobson, Hazel	234-38-6674	
* Armes, James	229-09-1229	3/56-6/65
Armes, Retha	223-46-3324	
* Hylton, Enoch H.	233-07-3401	3/46-9/47
		3/48-3/49
		9/49-9/57
		6/58
* Board, Anthony J.	233-09-9146	9/50-6/56
		12/56
		3/60
Board, Dollie	236-30-7356	
* Breckenridge, Earl H.	233-14-0069	6/46-6/52
		9/56-12/65
Breckenridge, Evelyn	236-48-8281	
* Hensley, Charles	233-14-3271	12/47-6/58
		12/58-6/62
Hensley, McClessie	233-32-1490	
* Pannell, Alexander	233-14-9709	3/46-6/62
Pannell, Margaret		

Miners and other Beneficiaries	SSN	Dates Miners Employed
* McGraw, Willard A.	235-01-2746	9/46-12/46 9/47 6/51-9/60
McGraw, Virginia		
* Richardson, Wilton L.	235-05-1043	3/46-9/54
Richardson, Clara M.	233-70-9385	
* Bolden, John C.	235-05-1151	12/56-9/65
Bolen, Frances	236-18-0458	
* Scott, Russell S.	235-05-4878	3/46-3/58
Scott, Mary	232-16-6738	
* Brown, Curtis F.	235-09-2332	3/46-12/51
Brown, Margaret	232-66-4481	
* Milam, Lacy A.	235-09-4719	01/46-09/56 01/57-09/57 11/58-02/59 05/59-06/59
Milam, Margie	233-64-9794	
* King, Walter R.	235-09-9189	3/46-9/52
* Lafferty, Goodal A.	235-09-9291	6/51-6/52
Lafferty, Nancy	236-48-5327	
* Edwards, Lloyd B.	235-10-2167	3/46-3/58
Edwards, Margaret	233-06-1150	
* Kennedy, James	235-10-2458	6/46-9/47 6/48 3/56-3/58
Kennedy, Virginia V.		
* Barber, M.	235-10-9009	3/49-12/50 3/51-6/51
Barber, Mabel	232-48-0908	
* Kiblinger, Charles W.	235-28-0798	9/47-3/51 9/51
Kiblinger, Evelyn	284-34-5215	
* Lambert, Harold	235-52-0808	6/57-9/65
Lambert, Rosie Lee	236-82-5365	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Kazee, Delbert	401-24-3389	3/51-6/65
Kazee, Mae	404-70-8109	
* Adams, Thurman	403-01-0527	6/48-6/52
Adams, Ollie	403-54-1541	
* Hoskins, Morris	403-01-2885	01/52-05/58 11/59-02/61
Hoskins, Elsie	407-30-0329	
* Hall, Troy	403-01-3147	3/47-9/52 6/53
Hall, Maggie	407-46-0478	
* Williams, Clyde E.	403-07-2116	3/46-12/61
Williams, Bertha		
* Scarborough, Fred R.	403-07-9216	3/48-12/50
Scarborough, Laura	407-22-4232	
* Stines, George D.	403-09-2107	3/53-12/63
Stines, Pauline		
* Mullins, Milton	403-10-9394	3/46-6/53
Mullins, Norma		
* Evans, William T.	403-18-3212	6/50-6/52
Evans, Sallie		
* Gambrell, Clarence	403-26-3578	11/48-08/62 10/62-12/65
Gambrell, Ethel	234-58-8879	
* Spears, Johnny	405-22-0103	12/46-6/49 3/50-9/50 3/51 6/52-9/52 3/53-6/53
Spears, Loretta	400-94-0610	
Spears, Betty	404-90-0902	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Chastain, Marshal	423-18-9048	3/46 6/48-12/50 12/51-6/53 6/56-12/62 9/63
Chastain, Lee W.		
* Leri, Louis	193-10-1290	11/46-12/46
Leri, Anna	162-50-7060	
* Hager, T.	233-07-4546	01/49-02/49
Hager, Reable		
* Harper, James A.	233-12-4218	6/47
Harper, Flora	403-16-9633	
* Pennington, James F.	233-22-4254	6/47
Pennington, Lydia	236-48-8983	
* Lovell, James C.	235-01-2985	3/47
Lovell, Grace	180-50-1312	
* Thompson, George E.	235-05-2525	01/51-12/51
Thompson, Minnie	235-96-2786	
* Gaskill, Charles	235-12-0762	3/46-6/53
Gaskill, Bertha	235-76-3095	
* Maynard, Cecil	403-05-4446	12/48-12/48 3/49-3/49 9/49-9/49
Maynard, Mae	236-66-0872	
* Bunk, Joseph J.	159-12-1030	3/46-6/63
Bunk, Helen	163-30-2701	
* Krisko, Stanley	159-16-2401	3/46-6/60 12/60-12/62
Krisko, Marie	196-22-9878	
* Zock, Lloyd T.	159-16-2471	3/46 3/47 3/49-9/56
Zock, Mary A.	063-12-1873	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Ciotti, Joseph	169-07-2234	9/56 3/57-6/57 9/58
Ciotti, Nancy	163-40-0212	
* Martin, James H.	171-18-2481	6/47-6/54 12/54-9/56 3/57-9/57 3/58-12/59
Martin, Nanna	722-16-1538	
* Earley, Harvey L.	177-01-9319	6/46-12/47 6/48
Earley, Evelyn	203-16-9842	
* Porter, Bruce E.	177-01-9828	3/46-12/48
Porter, Clara	200-50-7548	
* Mattias, Steve	187-01-0338	05/46-08/46 11/46-05/47 08/47-11/47 02/48-05/48 08/48-02/55 04/55-05/58
Mattias, Kathryn V.	383-18-9916	
* Stopka, Frank	191-01-3202	3/46-12/49 6/50
* Vespa, Henry	191-03-3764	3/46-6/49 6/50
Vespa, Stella	176-50-3701	
* Elchin, Mike	191-07-3301	3/51-12/52
* Mihalko, Joseph	191-09-0240	3/46-12/50 6/51
Mihalko, Nellie	170-18-3880	
* Doyka, Walter E.	193-10-3947	3/46-9/46
Doyka, Clara E.	182-50-9372	
Doyka, Thomas E.	183-50-1718	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Orehowsky, Michael F.	193-10-3965	3/46-9/46 3/47-6/58
Orehowsky, Anna	196-22-6550	
* Shedlock, Mike	193-10-4083	3/46-9/49 9/50 12/51
* Seabolt, Merrill W.	193-10-4094	3/49-12/49 6/50
Seabolt, Rosalie	125-12-9939	
* Janosik, John	193-10-4233	3/46-12/49 6/50-6/52
Janosik, Mary	385-42-7160	
* Lutz, John	193-10-4236	3/46-12/62
Lutz, Elizabeth	165-24-7944	
* Bobrowicz, Edward P.	193-10-4240	02/46-05/46 08/46-11/46 02/47-05/47 08/47-11/47 02/48-05/48 08/48-08/49 11/49-12/49 04/50-08/50 11/50-06/55
Bobrowicz, Hedwig	335-14-2629	
* Pristas, George	193-10-4244	3/46-12/62
Pristas, Francis	201-01-4467	
* Yurchik, Joseph W.	193-10-4268	3/46-12/62
Yurchik, Rose	161-50-9822	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Stoltz, Peter F.	193-10-4292	3/46-9/47 3/48-9/48 3/49-9/49 3/50-9/51 3/52-9/52 3/53-9/53 3/54-9/55 3/56-9/56 3/57-12/62
Stoltz, Marguerit	174-14-3069	
* Knisel, William A.	193-10-4318	3/46-9/48 3/49-9/49 6/50-9/55 3/56-9/56 3/57-9/61 3/62-12/62
Knisel, Julia	185-26-3155	
* Podrasky, Joseph G.	193-10-4321	3/46-9/49 M6/50-12/51
Podrasky, Rose A.	162-16-5322	
* Siedlarczyk, Andrew J.	193-10-4329	3/46-9/49 6/50 9/51
Siedlarczyk, Helen	161-38-7363	
* Krisco, Joseph	193-10-4336	3/46-6/52
* Ritchie, Peter	197-10-9110	3/48-12/52
Ritchie, Gay	289-20-4392	
* Kunkle, James	209-01-0695	3/46-6/46 12/46-12/58

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Sabol, Andrew E.	209-01-4295	6/49-12/49 3/50-12/50 3/51-6/51
Sabol, Margaret	286-22-5219	
* Benjack, Andrew C.	209-03-0273	3/46-12/62
Benjack, Agnes	209-07-2722	
* George, Chester H.	209-07-1951	3/46-9/49 9/50-3/51
* Strawderman, Melvin R.	209-07-3869	3/49-3/60
Strawderman, Estella	165-28-9077	
* Blystone, John F.	209-07-9195	3/46-12/48
Blystone, Flora	190-26-8246	
* Hoak, Raymond T.	209-07-9196	3/46-12/48
Hoak, Ella C.	206-52-8757	
* Hazlett, Kenneth L.	209-09-3974	3/46-12/62
Hazlett, Grace	170-36-4497	
* Linton, Samuel	209-10-4295	3/46-12/52
Linton, Idonia	235-36-1985	
* Voss, John G.	211-01-4548	3/46-6/58 9/62-12/62
Voss, Dorothy	175-20-6245	
* Scott, Richard	223-12-4202	12/52-6/59
Scott, Alta	406-68-1635	
Scott, Charlie	407-70-2825	
* Jennings, John W.	225-14-4290	3/46-12/65
* Wade, John T.	227-07-9147	6/47
Wade, Lucille		
* Rife, Thurmond	229-26-0906	3/46-6/46 6/47-12/47 6/48 6/57-9/62 6/63
Rife, Tessie	229-46-6713	
Rife, Melissa D.		

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Collins, Oakley L.	233-07-1372	3/47-9/47 6/48
Collins, Dora	233-88-6853	
* Fink, Kelice A.	233-07-1497	3/47
Fink, Geneve	234-46-0003	
* Beasley, Virgil V.	233-07-1512	9/47
Beasley, Asuncion	236-32-4676	
* Rash, Charles F.	233-07-3416	3/46-6/56 12/56-6/57
Rash, Martha	233-92-6574	
* Lehman, Leroy P.	233-07-3843	3/52
Lehman, Pearl	310-36-4624	
* Price, William H.	233-07-4169	9/46-3/58
Price, Corrine	235-64-5076	
* Workman, Harold F.	233-07-4216	6/50-9/51 6/52-3/54 9/54
Workman, Louise M.	217-22-0783	
* Wilson, Jake	233-09-2417	3/46-6/58 3/59-6/59
* Wood, Eugene	233-09-9133	3/46-12/57 12/58
Wood, May	235-88-6792	
* Pennington, James W.	233-09-9161	9/46
Pennington, Wanda	400-36-3781	
* Acord, Gaylord R.	233-09-9417	3/46-3/58
Acord, Beulah	232-66-2211	
* Oneal, Paul	233-09-9419	12/50-9/60
Oneal, Leta	226-76-3993	
* Green, Hobart	233-09-9758	3/47-12/51
Green, Bertha	235-56-5018	
* Chiericozzi, Sam	233-09-9762	3/46-9/53
Chiericozzi, Victoria	236-26-0417	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Ligocki, Rudolph E.	233-10-2965	12/50-6/53 6/56-9/57 3/58-9/63 3/64-9/64
Ligocki, Jeanette	232-42-9758	
* Mandakunis, Costos N.	233-10-3613	3/46-12/50
* Rose, G.	233-10-3631	9/42-6/42
Rose, Judy	406-14-6598	
* Lambert, John R.	233-10-3851	6/47-12/48 12/50-6/53
Lambert, Ella	236-70-6056	
* Mandakunis, Louis	233-10-4735	3/46-6/61
Mandakunis, Ruth P.	234-38-6578	
* Hudnall, Roy A.	233-10-9551	12/47-6/49 3/52
Hudnall, Martha L.	234-24-8238	
* Jordon, Elbert C.	233-10-9631	3/46-12/52
Jordon, Eva	234-70-6063	
* Bishop, Clyde L.	233-12-1351	12/50-9/52 6/53
* Nelson, Hershel D.	233-12-2014	3/51-12/57
Nelson, Alice	236-96-4194	
* Shaffer, A.	233-12-2038	3/57-9/57
Shaffer, Mary Ann A.	232-68-0116	
* Turner, Sandy L.	233-12-4637	3/46-9/53 9/54
Turner, Mamie	291-34-1543	
* Ferguson, Clyde	233-14-2589	3/47 12/51-9/57 6/58 12/58 3/59-6/59
Ferguson, Louise	233-44-8072	
* Doss, Oscar G.	233-14-2745	3/46-6/49

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Caruthers, Lyton	233-14-3092	3/50-6/62
Caruthers, Venia	236-84-0867	
* Brown, Wayne A.	233-16-3377	3/46-6/48 6/49
Brown, Verna	233-54-9035	
* Duncan, Cecil C.	233-18-4456	6/46-12/46 9/47
* Blackburn, Thelma B.	233-20-0863	3/46-6/52
Blackburn, Thelma	233-34-6488	
* Jarvis, Sherman	233-20-3929	3/46-12/64
Jarvis, Melva M.	235-64-0546	
* Hughes, Walter B.	233-20-9074	3/46-3/58
Hughes, Mary L.	232-96-9277	
* Malagrida, Carl	233-22-4611	3/46-12/47
* Carpenter, Fred	233-26-9407	3/46-12/46 6/47 9/47
Carpenter, Rebecca	233-94-4899	
* Tate, Wilson	233-28-1290	03/46-12/55 09/56 03/57
Tate, Decillian	234-70-9713	
* Cox, Okey R.	233-30-9567	9/57-9/60
Cox, Janet G.	236-48-7751	
Cox, Christophes Lacy, Ashley R.	233-15-5814	
* Richards, Floyd A.	233-30-9672	3/47-9/60
Richards, Mary	233-58-2739	
* Bostick, Robert L.	233-34-4709	3/51-3/60
Bostick, Edith	233-54-9772	
* Church, Fred G.	233-34-9747	6/48-9/62
Church, Ruby	234-42-7713	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Waddell, Billie R.	233-38-9432	9/47-12/53 12/64
Waddell, Freda	232-76-9483	
* Moody, Charles	233-42-0119	6/48-12/48
Moody, Regina	234-46-0713	
* Jarrett, Denver L.	233-44-2199	3/49-9/51
Jarrett, Mildred G.	233-44-3247	
* Bailey, James L.	233-44-9006	9/47-12/47 6/48-9/48 3/58-6/60
Bailey, Gladys	234-86-3003	
* Bailey, Lois D.	233-44-9100	6/53-9/53 9/54 6/55-6/58
Bailey, Lois		
* Duncan, Louise	233-54-9957	12/57-12/65
Duncan, Louise		
* Kinder, Frank H.	235-01-2239	9/47-6/56 12/56
Kinder, Bertha E.	236-96-5756	
* Campbell, Christophec	235-03-9681	3/46-6/51
Campbell, Baby Ruth	230-30-3852	
Campbell, Jacqueline	226-33-2106	
* Elkins, Roy A.	235-05-0168	12/50-6/51
* Larson, Vernon W.	235-05-1268	6/49-3/58
Larson, Ruby	234-96-9257	
* Daniels, Lacy	235-05-1612	6/46-6/51
Daniels, Elva		
* Moore, Roy E.	235-05-2044	6/47-12/52 6/53
Moore, Callie	267-66-7693	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Bailey, Ruby D.	235-05-2095	6/48 9/50-6/51 3/52-9/53 3/54-9/54 3/55-6/58 3/59-9/63
Bailey, Ruby		
* Street, Eugene L.	235-05-3153	3/46-9/46 3/47-9/47 3/48-9/48 3/49-9/50 3/51-9/51 3/52-9/52 3/53-12/53 9/54
Street, Zora M.	232-24-7713	
* Johnson, Samuel L.	235-07-0696	3/46 6/47 9/48-6/52
* Johnson, Charles E.	235-07-0943	3/52-6/52
* Price, Charles E.	235-07-1135	6/48-3/52 9/52
Price, Cecile N.	233-44-7966	
* Washington, French C.	235-07-1189	3/46-12/46 6/47
Washington, Lucille	225-50-5029	
* Broadnax, George W.	235-07-1343	3/49-6/52
Broadnax, Emmaline	232-64-3801	
Broadnax, Tina	233-94-8687	
* Grose, Carlos A.	235-07-1373	3/46-6/52
Grose, Mary K.	293-52-1306	
* Pinion, Sam A.	235-07-2851	3/46-6/52
Pinion, Mary		

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Turner, Simon	235-07-4121	3/47
Turner, Benzie	236-32-4523	
* Legg, Otis B.	235-07-4597	3/46-6/52
Legg, Grace	233-38-1904	
* Widay, Frank V.	235-07-4682	9/57-9/60
Widay, Virginia	233-07-9361	
* Rock, Jacob	235-09-1162	6/51-6/52 3/56-6/57
* Gorta, Joe	235-09-1890	3/46-12/52
Gorta, Rosa	232-02-3886	
* Nutter, Leonard O.	235-09-1921	3/56-6/53
Nutter, Rose	284-32-6784	
* Byrd, Samuel W.	235-09-1925	3/46-9/52
Byrd, Ella L.	236-50-7256	
* Simley, Phillip T.	235-09-1939	3/46-12/52
* Joyce, Ada L.	235-09-1949	3/46-9/52
Joyce, Ada		
* McLemore, Theodore D.	235-09-2077	3/46-12/52
McLemore, Virginia	233-58-7003	
* Harris, King R.	235-09-2160	12/46-6/51
Harris, Iola	211-16-4529	
* Fisher, Ovel O.	235-09-2165	9/52-6/59
Fisher, Loretta	233-20-7659	
* Black, James E.	235-09-2233	9/50-6/52
Black, Ruth J.	236-84-0194	
* Davenport, Isiah	235-09-2262	3/46-12/50 6/51
Davenport, Nannie	278-30-0643	
* Dean, T. R.	235-09-2395	3/46-12/47 9/48-6/49
Dean, Mary	233-38-5644	
* Armstrong, Elmer W.	235-09-2402	3/46-9/52
Armstrong, Carrie	236-42-5230	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Holbrook, Thomas J.	235-09-2520	12/50-6/58
Holbrook, Frances	235-56-9723	
* Dorsey, Harvey A.	235-09-4452	9/47-12/47
Harvey, Ethel		
* Armistead, John L.	235-09-9797	3/46-12/53
Armistead, Josephine	268-64-7833	
* Foster, Luther L.	235-09-9838	12/47
Foster, Gussie M.	451-17-1874	
* Fink, Ernest C.	235-09-9889	3/46-6/48 3/49-6/50 6/52
* Flynn, James E.	235-10-0228	3/46-12/53
* Hairston, Thomas C.	235-10-1579	3/46-9/63 3/64-3/65
Hairston, Dorothy		
* Holland, Turner N.	235-10-1778	3/48-3/53
Holland, Marie	232-42-8714	
* Bright, John H.	235-10-2305	12/50-9/51 9/52
Bright, Rosa K.	235-70-5021	
* Farley, Roy R.	235-10-2397	9/47-12/47
Farley, Ruth	234-56-8015	
* Adkins, Emmitt S.	235-10-2841	3/46-12/46 3/47-3/47 12/48 3/49-3/49 3/50-12/50 3/51-12/51 3/52-12/52
Adkins, Goldie	232-13-7704	
* Wallington, Lawrenc	235-10-2949	3/46-3/53
Wallington, Ruth	232-02-6560	
Wallington, Anthony D.	235-29-2039	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Ziegler, Reece B.	235-10-3320	3/46-9/47
		3/48-6/49
Ziegler, Gretchel	369-24-7030	
* Centers, Theodore R.	235-10-3597	08/47-11/47
		11/48-05/49
* Whittaker, Virgil L.	235-10-3647	05/57-09/58
		01/59-09/60
		01/61-09/61
		01/62-08/62
Whittaker, Ruby E.	232-48-2344	
* Short, George W.	235-10-3677	3/46-12/47
Short, Lorraine	298-26-0858	
Jones, Katrina D.		
* Cooper, Noah L.	235-10-4001	3/46-6/48
Cooper, Gary W.		
* Holstein, Woodrow W.	235-10-4018	12/46-6/51
		12/51-6/53
		6/56-6/58
		12/58-9/59
		6/60-6/60
Holstein, Joetta	233-42-0863	
* Leo, Domenico	235-10-4027	3/46-9/60
Leo, Autie	235-70-5665	
* Moore, Coye E.	235-10-4049	3/46-6/49
		12/49-6/53
* Richards, Lloyd C.	235-10-4073	9/47
		6/48
Richards Josie	167-50-4358	
* Tolley, Walter E.	235-10-4087	3/46-6/53
Tolley, Nina	233-96-6620	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Hughes, Hollie R.	235-10-4166	3/46-9/49
		6/50
		3/51-6/58
		12/58-6/61
		12/61-6/62
Hughes, Alma	236-40-1179	
* Perry, George A.	235-10-4178	6/46-12/48
Perry, Golda O.	235-62-0480	
* Shumate, Bryan	235 10-9040	3/51-12/51
Shumate, Imogene	236-98-2998	
* Cantley, Joe	235-10-9354	9/50-12/50
		6/51
* Barrett, Opal	235-10-9350	3/46-12/59
		3/60-6/60
Barrett, Flora	151-26-2759	
Barrett, Opal	235-96-8771	
* Gorby, John H.	235-12-9237	3/46-6/58
* Thompson, Harry F.	235-16-4596	12/49-9/52
Thompson, Goldie M.	233-22-9119	
* Mullens, Oza	235-16-9591	3/46-6/59
		12/59
		6/60
* Weir, Richard	235-20-9264	3/46-9/63
Weir, Catherine A.	516-24-5623	
* Lester, Bertha	235-26-1189	9/48-6/49
Lester, Bertha		
* Foster, James R.	235-26-9729	9/47-6/48
Foster, Myrtle		
* Fulcher, Howard	235-28-1246	6/52
* Jeffrey, Robert	235-28-1724	01/46-02/53
Jeffrey, Myrtle	235-26-2186	
* Bowman, Raymond L.	235-28-1987	3/46-3/53
Bowman, Margaret	233-40-5877	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Browning, Torkel	235-30-9735	12/46-6/47
Browning, Margaret A.	236-78-1478	
Browning, Samuel S.	236-94-8707	
* Robinson, Herman C.	235-36-9370	9/46-9/64
Robinson, Mildred G.	233-40-5643	
* Whitt, William	235-38-0288	3/47
Whitt, Betty J.	233-60-0156	
* Wimmer, Ralph C.	235-38-1423	6/46-12/56
		9/57
Wimmer, Helen R.	234-40-9841	
* Moran, Herman A.	235-44-0849	9/46-9/56
		3/57-9/57
		3/58
Moran, Virginia	232-34-0327	
* Wilkins, William J.	249-09-0239	3/46-3/53
Wilkins, Mattie		
* Bowling, Clyde R.	283-01-2401	9/47
Bowling, Lyda B.	403-70-7676	
* Curry, Hayward	401-18-2446	3/49
Curry, Lucy		
* Cline, Morgan	401-28-0648	3/47-6/47
Cline, Aline		
* Hall, Lloyd	403-01-3127	3/46-9/46
		3/47-6/53
* Johnson, Ben	403-01-3137	3/46-6/56
Johnson, Della M.	406-90-0717	
* Hall, Silas	403-03-4406	3/46-9/49
		6/50-6/53
Hall, Rilla	400-90-2835	
* Debose, Ulyss	403-03-4426	3/46-6/53
Debose, Freddie	406-48-0892	
* McDavid, George P.	403-05-4218	3/46-6/58
McDavid, Margie	402-92-8646	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Lewallen, Lewis	403-05-4240	3/46-6/48
		3/49-9/50
		6/51
Lewallen, Ruth	405-44-1151	
* Wallen, Melvin	403-07-2544	9/52-6/58
		12/59-9/61
Wallen, Mabel	402-58-5034	
* Tackett, Ellis	403-07-3321	9/52
Tackett, Mellie	400-88-8481	
* Darden, Sam	403-09-2940	3/46-9/47
		3/48-9/48
		3/49-6/53
* Johnson, Elmer C.	403-10-9386	3/46-12/48
Johnson, Frankie	400-74-9243	
* Charles, Glen L.	403-26-4038	12/48-3/61
		3/62-9/63
		3/64-6/64
Charles, Emma J.	235-52-2615	
* Cook, Freeda	405-03-3805	6/52-9/59
Cook, Freeda		
* Vanhoose, Jay	405-05-9281	6/48-6/51
Vanhoose, Rushie	407-92-5282	
* Burke, Hartman	405-22-1524	3/46-9/47
		6/48
		9/51-12/51
		6/52
Burke, Laura		
* Steffey, Charles M.	407-01-1196	12/48
Steffey, Hazel	401-66-8352	
* Stanley, Sam	407-22-1164	3/46-9/47
		3/48-6/48
		12/48-3/49
Stanley, Mary M.	401-34-5868	

Miners and other Beneficiaries	SSN	Dates Miners Employed
* Tiller, Tuness	719-01-4330	08/46-09/46 02/47-05/47 05/51-11/51 05/52-11/52 02/53-05/53
Tiller, Thelma T.	236-60-1608	
* Macidyn, Stanley J.	191-09-0961	12/46-9/48 6/49
Macidyn, Dorothy M.	199-30-5674	
* Birchfield, Noble H.	233-14-1118	3/52-12/52
Birchfield, Virginia	233-68-2371	
* Aldridge, William B.	235-05-1125	9/46-6/53
Aldridge, Gladys	232-86-4153	
* Sweeney, Grady W.	235-05-1825	3/46 3/47 3/51-6/53
Sweeney, Edith	235-68-1323	
* McKinney, Howard J.	235-44-0671	3/48-9/48
McKinney, Elva	232-72-6238	

Eli Goldston

Law Department
November 7, 1962

PROPOSED TRANSFER OF COAL DIVISION ASSETS TO A CORPORATION

II - SALES CONTRACTS AND RELATED MATTERS

The majority of sales are made either on a spot basis or on contracts of one year's duration expiring in most cases in March, at which time new contracts are negotiated. The standard form used for contracts of this type contains no provisions creating any problems of assignment or transfer.

Sales contracts with a term greater than one year are customarily tailor-made and usually do not contain prohibitions against assignment or transfer. The exceptions to this general practice are the following:

A. Eastern is exclusive supplier for the coking coal requirements of Granite City Steel Company under a contract expiring in 1970. In the fulfillment of this contract Granite City and Eastern have entered into supply contracts with Old Ben Corporation, Freeman Coal Mining Corporation, and Sahara Coal Company, Inc., for a portion of said requirements to be obtained from the latter three companies' mines.

   Each of these three supply contracts is coextensive with the Eastern-Granite City contract and poses problems of assignment and transfer by virtue of a provision contained in each as follows:

   > "This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, but it may not be assigned by either party

without the written consent of the other, except that any party may without the written consent of the other assign this Agreement to a successor to all or substantially all of its property and assets, and may pledge this Agreement to secure its indebtedness incurred or to be incurred for the purpose of or in connection with the performance of this contract; and any party hereto may without the consent of the others assign to any financing institution or institutions any monies due or to become due hereunder; provided, however, that no such assignment shall operate to release any of the parties hereto from its obligations under this Agreement."

B. A contract with Armco Steel Corporation for the requirements of its Middletown, Ohio plant to be supplied from Eastern's Keystone mine, expiring January 1, 1979, with Armco's option to renew up to 20 more years. The transfer or assignment problem here arises from provisions in said contract reading as follows:

"(a) If Seller shall during the existence of this agreement, or any extension thereof, desire to sell its keystone coal mining properties, leases and facilities, substantially or wholly as a unit, subject to the consent of Seller's lessors, it shall first offer in writing, addressed and delivered to Buyer, for

acceptance within ninety (90) days from date of delivery, thereof, to sell such unit to Buyer, subject to the consent of Seller's lessors, upon the same terms and conditions upon which it may thereafter be offered for sale if not purchased by Buyer. If Buyer fails to give Seller written notice of its desire to purchase upon such terms and conditions within such ninety (90) days, Seller may thereafter sell to any other party but Seller shall not sell to any other party upon any better terms and conditions than those offered to Buyer without again giving Buyer the ninety (90) day right of refusal described above.

"If Buyer fails to exercise its rights to purchase after notice given by Seller and Seller thereafter sells to any other party upon the same terms and conditions previously offered to Buyer, Buyer may at its option terminate this agreement forthwith. In advance of any sale as aforesaid, Seller may advise Buyer of the name of the prospective purchaser and thereupon may require Buyer to make its election whether to terminate this agreement, contingent upon such sale, and upon failure of Buyer to make such election, Seller may assign this agreement to such prospective purchaser in such sale. Otherwise, Seller shall make no assignment of this agreement without Buyer's written consent.

"(b) Seller shall have the right to discontinue the operation of its Keystone Mine at any time upon six (6) months' prior written notice to Buyer, in which

event the obligations of both parties shall cease: Provided, however, that subject to the consent of Seller's lessor, Buyer shall have the option, exercisable within six (6) months following receipt of Seller's written notice of discontinuance, either (i) to purchase such Keystone mining operation at its fair market value, or (ii) to lease from Seller such Keystone mining operation until the expiration of this agreement, or any extension thereof, or for any shorter period (but not less than five years), at an annual rental, payable to Seller, equal to six percent (6%) of the fair market value of such equipment and other property used by Seller in said Keystone mining operation, as Buyer may deem necessary for said Keystone mining operation, plus the assumption by Buyer of Seller's obligations under Seller's lease. Buyer shall maintain and keep in good repair such equipment and other property and surrender same to Seller at the end of such lease period in as good condition as when Buyer received it, ordinary wear and tear excepted. Fair market value of said Keystone mining operation and fair market value of said equipment and other property used by Seller in said Keystone mining operation, and the applicable date of such fair market value, shall each be determined by an independent, disinterested, competent and properly qualified appraiser to be elected by agreement between Seller and Buyer, or, failing such agreement, by arbitration as provided in Article 12 of this agreement."

C. Contract with SOMISA to supply coal to Argentina Steel Plant, expiring at the end of 1962, with right of SOMISA to extend from year to year thereafter to 1966. A provision of this contract states that neither party shall have the right to partially or totally transfer this order without agreement of the other.

There are a couple of minor agreements whereby Eastern has appointed agents for sales of coal, but these pose no transfer problems.

Inasmuch as Castner, Curran & Bullitt, Inc., Eastern Gas and Fuel Argentina S.R.L., Eastern Gas and Fuel (Combustiveis) Ltds., and New England Coal and Coke Company are separate corporate entities, although related in a practical business way to the Coal Division of Eastern, we have not examined their agreements, contracts, commitments, etc., since we assume they will retain their current separate corporate status.

III - GENERAL AND MISCELLANEOUS MATTERS

Other areas in a transfer of assets of this nature in which problems could arise and should be considered are as follows:

1. Personnel problems involving pension and allowance plans, group and other insurance, workmen's compensation (Coal Division is self-insured), unemployment compensation (transfer of experience rating) and union contract (UMWA national and local agreements).

2. Bulk sales laws.

Eli Goldston

Law Department
November 7, 1962

PROPOSED TRANSFER OF COAL DIVISION ASSETS TO A CORPORATION

3. Appraisal statutes regarding sale of assets and stockholders' rights.

4. Pending litigation.

5. Possible questions raised by title companies as to status of ownership and manner of transfer of titles to real estate in Pennsylvania held in name of Massachusetts Trust.

6. Other corporate entities and organizations related solely to the Coal Division, such as Eastern Gas and Fuel Recreation Camps, Inc., Indian Creek Valley Mine Drainage Company, Winstock Land Corporation, EGFA Federal Credit Union, should be given consideration.

7. Assignability of miscellaneous contracts and agreements such as office space leases, purchase agreements, equipment guarantees, informal or verbal understandings, etc., we do not believe pose any serious problems.

We have given no consideration to any problems that might arise by virtue of Eastern's Declaration of Trust or Bond Indenture instruments.

We hope the foregoing is what you had in mind, but if you desire any more detail on the above or in other areas, please let us know and we will be happy to work up all that may be of help.

CORPORATE

CASH

MANAGEMENT

MANUAL

EASTERN GAS & FUEL

* * * *

EGFA 6/79
5A 5B1

- The subsidiary Treasurer has specified funds availability for a certain period of time only.

- The subsidiary Treasurer has an emergency cash need and the cash has not been put to an alternative use at the parent company.

Each subsidiary reviews the balance in its advance accounts in the last month of each quarter and at year end in conjunction with target dividend payout as described in 5B below.

5B POLICY–DIVIDENDS FROM SUBSIDIARIES AND REVIEW OF ADVANCE ACCOUNTS

5B1 Policy–Dividends from Subsidiaries

The EGFA dividend payout ratio to shareholders will depend upon the current dividend level and net income for a particular year. The Funds for dividends are supplied by the subsidiaries. Since each subsidiary's growth rate and capital needs differ, the following target payouts have been set for each location:

- EACC - 100% of net income plus cash flow in excess of book depreciation and cost depletion

- Midland - 40% of net income

- BGAS - 90% of net income

- Coke - 100%

The resulting amounts are included in the annual forecast as a dividend. (See 15B in the Corporate Accounting Policy Manual.) The timing of these dividends from subsidiaries is adjusted by the EGFA Treasurer to ensure that there are sufficient subsidiary dividends received to satisfy the dividend to stockholder requirements.

If the results of the subsidiary's forecast show a cash need, the subsidiary may borrow externally to finance its dividend requirements to Eastern. Each subsidiary Treasurer discusses each borrowing situation as it arises with the parent company Treasurer.

* * * *

ARTHUR
ANDERSEN
& Co.

EASTERN ASSOCIATED COAL CORP.
AND SUBSIDIARIES

(A Wholly Owned Subsidiary of
Coal Properties Corp.)

CONSOLIDATED FINANCIAL STATEMENTS
AS OF DECEMBER 31, 1986 AND 1985
TOGETHER WITH AUDITORS' REPORT

* * * *

EASTERN ASSOCIATED COAL CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME
AND RETAINED EARNINGS
FOR THE YEARS ENDED DECEMBER 31, 1986 AND 1985

	1986	1985
NET SALES AND OPERATING REVENUES	$436,239,047	$470,139,619
OPERATING COSTS AND EXPENSES		
Cost of sales and mine operating expenses	$344,155,659	$390,530,258
Depreciation, depletion and amortization (Note 5)	19,126,196	22,681,487
Write-down of mining assets (Note 6)	—	39,375,753
Selling, general and administrative expenses	17,839,228	17,907,479
Taxes, other than Federal income	39,891,042	40,887,972
	$421,012,125	$511,382,949
INCOME (LOSS) FROM OPERATIONS	$ 15,226,922	$(41,243,330)
OTHER INCOME (EXPENSE) (NOTE 12)	4,147,340	5,898,110
INTEREST EXPENSE (NOTE 4)	6,826,783	6,041,912
INCOME (LOSS) BEFORE BENEFIT FOR FEDERAL INCOME TAXES	$ 12,547,479	$(41,387,132)
BENEFIT FOR FEDERAL INCOME TAXES (NOTE 3)	(22,532)	(25,812,480)
NET INCOME (LOSS)	$ 12,570,011	$(15,574,652)
RETAINED EARNINGS, BEGINNING OF YEAR	107,475,219	123,049,871
DIVIDEND TO COAL PROPERTIES	24,162,854	—
RETAINED EARNINGS, END OF YEAR	$ 95,882,376	$107,475,219

The accompanying notes are an integral part of these consolidated statements.

* * * *

ARTHUR
ANDERSEN
& CO.

COAL PROPERTIES CORP.
AND SUBSIDIARIES

(A Wholly Owned Subsidiary of
Eastern Gas and Fuel Associates)

CONSOLIDATED FINANCIAL STATEMENTS
AS OF DECEMBER 31, 1986 AND 1985
TOGETHER WITH AUDITORS' REPORT

* * * *

COAL PROPERTIES CORP. AND SUBSIDIARIES
CONSOLIDATED STATEMENTS OF INCOME
AND RETAINED EARNINGS
FOR THE YEARS ENDED DECEMBER 31, 1986 AND 1985

	1986	1985
NET SALES AND OPERATING REVENUES	$482,618,469	$495,507,961
OPERATING COSTS AND EXPENSES		
Cost of sales and mine operating expenses	$383,115,014	$413,605,038
Depreciation, depletion and amortization (Note 5)	23,628,968	24,742,402
Write-down of mining assets (Note 6)	—	39,375,753
Selling, general and administrative expenses	18,216,213	17,975,872
Taxes, other than Federal income	43,987,821	42,744,487
	468,948,016	538,443,552
INCOME (LOSS) FROM OPERATIONS	$ 13,670,453	$(42,935,591)
OTHER INCOME (EXPENSE) (NOTE 13)	4,827,464	6,471,002
INTEREST EXPENSE (NOTE 4)	10,660,113	10,184,829
INCOME (LOSS) BEFORE PROVISION (BENEFIT) FOR FEDERAL INCOME TAXES	$ 7,837,804	$(46,649,418)
PROVISION (BENEFIT) FOR FEDERAL INCOME TAXES (NOTE 3)	(2,764,950)	(26,793,489)
NET INCOME (LOSS)	$ 10,602,754	$(19,855,929)
RETAINED EARNINGS, BEGINNING OF YEAR	16,712,877	36,568,806
DIVIDEND TO EASTERN	33,195,159	—
RETAINED EARNINGS (DEFICIT) END OF YEAR	$ (5,879,528)	$ 16,712,877

The accompanying notes are an integral part of these consolidated statements.

* * * *

STOCK EXCHANGE AGREEMENT

between

PEABODY HOLDING COMPANY, INC.

and

EASTERN GAS AND FUEL ASSOCIATES

March 31, 1987

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SCHEDULES

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EXHIBIT A FORM OF INDEMNIFICATION AGREEMENT
EXHIBIT B FORM OF ROPES & GRAY OPINION
EXHIBIT C FORM OF WHITE & CASE OPINION

STOCK EXCHANGE AGREEMENT

Stock Exchange Agreement, dated as of March 31, 1987 (herein called "this Agreement") by and between Eastern Gas and Fuel Associates, a Massachusetts business trust (herein called "Eastern") , and Peabody Holding Company, Inc., a New York corporation (herein called "Peabody").

WITNESSETH:

WHEREAS, Eastern owns all of the outstanding shares of common stock of Coal Properties Corp., a Delaware corporation (herein called "CPC");

WHEREAS, Peabody desires to acquire such stock in exchange for 15.01% of the outstanding shares of Peabody common stock and Eastern desires to effect the exchange of such stock, all upon the terms and conditions herein set forth; and

WHEREAS, simultaneously with the closing of the transactions hereunder a closing will be held under the MCBL Stock Exchange Agreement of even date herewith between Eastern and Mid-Continent Barge Lines, Inc. ("MCBL") pursuant to

which Eastern will exchange 100% of the shares of preferred stock of CPC for 75,050 shares of common stock of MCBL (the "MCBL Stock Exchange Agreement").

NOW, THEREFORE, in consideration of the premises and the respective agreements herein set forth and for the purpose of consummating such transaction, Eastern and Peabody hereby agree as follows:

1. Definitions. The following terms when used in this Agreement shall, unless the context otherwise requires, have the following meanings:

(a) An "Affiliate" of a specified company shall mean any corporation, firm, partnership, joint venture or other business organization, wherever incorporated or organized, of which such specified company or a Subsidiary thereof shall own ten per cent (10%) or more, but less than a majority, of the voting capital stock or equivalent capital interest.

* * * *

indicated. The books and records of CPC and its Subsidiaries and Affiliates reflect, respectively, all transactions of CPC and its Subsidiaries and Affiliates in conformity with generally accepted accounting principles as applied in accordance with customary coal mining industry practice.

(k) Absence of Undisclosed Liabilities. Except as and to the extent (i) reflected and reserved against in the financial statements referred to in Section 2(j) above, (ii) disclosed in other Schedules to this Agreement or the letter of counsel referred to in Section 2(n), (iii) of liabilities and obligations incurred in the ordinary course of business since February 28, 1987 and (iv) liabilities and obligations incurred in connection with, and specifically contemplated by this

Agreement, neither CPC nor any Subsidiary or Affiliate of CPC has incurred any liabilities or obligations of any nature (whether absolute, accrued, contingent or otherwise) which (x) are material to CPC and such Subsidiaries and Affiliates taken as a whole, and (y) with respect to any unasserted claim, a potential claimant has manifested to CPC or any such Subsidiary or Affiliate a present intention to assert a possible claim.

(l) Tax Matters. Eastern, as common parent of the affiliated group including CPC and its corporate Subsidiaries, CPC, and each Subsidiary and Affiliate of CPC, have duly filed, within the times and in the manner prescribed by law, all tax reports and returns which are required to be filed and each has paid all taxes, interest and penalties as shown on said reports and returns and on all assessments received by Eastern, CPC and each Subsidiary or Affiliate of CPC, as the case may be (except such assessments which are being contested in good faith by appropriate proceedings disclosed on Schedule 2(l)(i), item 1 hereto or for which adequate reserves identified on Schedule 2(l)(ii), item 1 hereto have been made), to the extent that such taxes, interest and penalties have become due. All tax liabilities or other fiscal charges of CPC, its corporate Subsidiaries and Affiliates attributable to taxable periods on or prior to the Closing Date (determined by employing the principles of Section 10(c), second paragraph) that have not yet been paid, have in the

* * * *

date $6,000,000 in cash and the option herein granted to Peabody to acquire from Eastern all of the capital stock of Charles shall thereupon be cancelled. It is also agreed that Eastern shall have no obligation to make such $6,000,000 payment if Peabody exercises such option and acquires all of

the capital stock of Charles or becomes obligated to do so and fails to perform.

During the period that Peabody holds the option to acquire all of the capital stock of Charles, Eastern agrees that, unless the prior written consent of Peabody shall have been obtained authorizing any exception or modification thereto, it will cause Charles to conduct its affairs so as to comply with clauses (i) through (xxi) of Section 4(a) of this Agreement substituting in said clauses "Charles" for "CPC" as appropriate and Section 10(i) of this Agreement; provided, however, that nothing contained herein shall obligate Eastern or Charles to take any action or refrain from taking any action that would cause either Eastern or Charles to commit a breach of its obligations under the Control Agreement or the Venture Agreement. Eastern will consult with Peabody concerning Federal income tax matters pertaining to Charles and shall provide Peabody with copies of draft and final income tax returns pertaining to Charles as soon as practicable after receipt for as long as Peabody has the option to acquire Charles.

Eastern agrees to indemnify and hold Peabody, its Subsidiaries and Affiliates and its or their successors harmless against all damages, losses and out-of-pocket expenses caused by or arising out of any claim by Bluestone or Walnut that the foregoing arrangement involves a breach of, interference with or frustration of, the Control Agreement or the Venture Agreement by Eastern or Peabody or any of their Subsidiaries or Affiliates.

5. Covenants and Agreements of Peabody.

(a) Conduct of Business. Peabody covenants and agrees that from and after the date of this Agreement and until the Closing Date, except as Eastern shall otherwise specifically consent to in writing which consent shall not be unreasonably withheld, Peabody will, and will cause its Subsidiaries to, conduct their affairs so that Peabody and its Subsidiaries:

(i) except as permitted by Section 4(f), will not declare, set aside or pay any dividend on, or make any other distribution in respect of, any shares of its capital stock except, in the case of Subsidiaries, to Peabody or any other Subsidiary of Peabody or purchase or otherwise acquire any shares of its capital stock other than the repurchase of shares contemplated in the Repurchase Agreement;

(ii) will not amend their respective Charters or By-laws;

(iii) except for the proposed AEP-Barrick-New York Life transaction, the details of which have previously been disclosed to Eastern, will carry on their respective businesses diligently, in the ordinary course and in substantially the same manner as heretofore;

(iv) will permit Eastern and its authorized officers, employees, attorneys, engineers, accountants and other representatives to have full access to all their properties, records and documents and will furnish to Eastern such additional financial and other information with respect to their business, properties and affairs (including monthly operating and financial reports regularly prepared by them) as Eastern may from time to time reasonably request;

(v) will not enter into any transaction of merger or consolidation.

(b) Assumption of Certain Leases. In connection with the leases and agreements listed in Schedule 5(b) hereto Peabody hereby agrees to cooperate in good faith with

Eastern to effect the substitution of CPC for Eastern thereunder and the full release and discharge of Eastern in connection therewith if each of the following conditions shall be satisfied: (1) the terms of such substitution shall impose no liability or obligation on Peabody or any Subsidiary thereof other than CPC; (2) the obligation of CPC under such substitution shall be unsecured and shall not be, or have associated covenants which are, in violation of any contract or agreement to which Peabody or CPC is a party; and (3) the terms of such substitution shall not, in the good faith judgment of Peabody, have an adverse effect on the value to Peabody of the assumed lease. In respect of those leases listed in Schedule 5(b) under which CPC shall not be substituted for Eastern pursuant to the foregoing provisions, Peabody hereby agrees to cause CPC to .enter into an Indemnification Agreement in the form of Exhibit B hereto. In the event that CPC shall at any time during the term of such Indemnification Agreement fail to meet any obligations thereunder, Peabody agrees to cause such other of its Subsidiaries or Affiliates as shall have adequate means to satisfy the obligations under such Indemnification Agreement to assume CPC's obligations thereunder and to forthwith cure any defaults thereunder, and, in the event that no Subsidiary or Affiliate of Peabody shall be able to meet such obligations then Peabody hereby agrees to assume the obligations under such Indemnification Agreement and to forthwith cure any defaults thereunder.

(c) Welfare Benefits.. Peabody acknowledges that CPC, EACC or the other Subsidiaries of CPC shall be liable, in respect of the class of individuals hereinafter specified, for payments of premiums and benefits, and for the reimbursement of benefit costs, under the plans listed on Schedule 5(c) hereto, and Eastern shall not be liable either for the direct payment of any such premium, benefit or cost or by way of indemnification of any such premium, benefit or cost paid by Peabody or any of, its Subsidiaries, including CPC,

EACC and the other Subsidiaries of CPC; it being understood that the foregoing provision does not create any benefits for individuals other than those benefits that they would otherwise be entitled to but for this provision. The class of individuals referred to in the preceding sentence shall be (i) all persons who as of the Closing Date are employed by EACC, CPC or any other Subsidiary of CPC and (ii) all persons who prior to the Closing Date retired or otherwise ceased to be employed by CPC or any of its Subsidiaries (including EACC), exclusive of any such person who as of the Closing Date is employed by Eastern or by a Subsidiary of Eastern other than CPC and CPC's Subsidiaries. It is understood and agreed by Peabody and Eastern that Eastern shall be liable, and shall have no right to indemnification or reimbursement from Peabody or any Subsidiary of Peabody, for payments of premiums and benefits and the reimbursement of benefit costs in respect of any person previously employed by CPC or any of its Subsidiaries (including EACC) who as of or prior to the Closing Date becomes an employee of Eastern or a Subsidiary or Affiliate of Eastern other than CPC or CPC's Subsidiaries and Affiliates.

(d) Retirement Plan Matters.

(1) As of the Closing Date Peabody shall provide to Eastern a definitive list of all persons described in clause M of paragraph 4(e)(1) above who will be continued in the employ of a "transferred entity" (as that term is described in paragraph 4(e)(1) above) and a definitive list of all persons described in clause (i) of paragraph 4(e)(1) above who will be terminated from the employ of the transferred entities (as so defined) as of or immediately after the Closing Date.

(2) If as of the first anniversary of the Closing Date it is determined that the amount ((A + B) - C) deter-

mined under paragraph 4(e)(2) above, where each of the quantities A, B, and C has the meaning given it in such paragraph 4(e)(2), is less than zero, Peabody shall cause to be transferred from the EACC successor trust or the successor thereto, to the trust associated with the Eastern Gas and Fuel Associates Retirement Plan, an amount equal to the absolute value of ((A + B) - C) as determined above, plus interest thereon at the rate of 7-1/2 percent per annum compounded annually for the period beginning on the Closing Date and ending on the date of the transfer described in this paragraph 5(d)(2), which date shall be as soon as practicable after, and in no event more than thirty days after, the first anniversary of the Closing Date. For purposes of the preceding sentence "EACC successor trust" shall have the meaning given it in paragraph 4(e)(2) above. Notwithstanding the foregoing, Peabody shall not be required to cause the asset transfer described in this paragraph 5(d)(2) unless and until Eastern furnishes Peabody with evidence, including an Internal Revenue Service determination letter or an opinion of counsel, acceptable to Peabody that the trust associated with the Eastern Gas and Fuel Associates Retirement Plan is a qualified trust under Section 401(a) of the Internal Revenue Code of 1986. For all purposes, including funding standard account, accounting treatment and other spinoff purposes, Peabody and Eastern agree that the transfer described in this paragraph 5(d)(2), if any, and the transfer or transfers described in paragraph 4(e)(1) above comprise one transaction for purposes of Section 414(l) of the Internal Revenue Code of 1986.

6. Closing. Subject to the terms and conditions of this Agreement, the Closing under this Agreement shall take place at 11 A.M., New York time, on March 31, 1987, at the offices of Messrs. White & Case, 1155 Avenue of the Americas, New York, N.Y., or at such other time and place as may be mutually

agreed upon by Peabody and Eastern. The date and time of Closing are herein sometimes referred to as the Closing Date.

7. Transfer of Securities. Subject to the terms and conditions set forth in this Agreement:

(a) Delivery of CPC Shares. In consideration of the transfer of the Peabody Shares as below provided, Eastern will, on the Closing Date, convey, assign, transfer and deliver to Peabody the CPC Shares by delivery of certificates therefor in duly transferable form together with Stock Transfer Powers duly executed in blank form.

(b) Delivery of Peabody Shares. in consideration of the transfer of the CPC Shares as above provided, Peabody will, on the Closing Date# convey, assign, transfer and deliver to Eastern the Peabody Shares by delivery of certificates therefor.

8. Conditions to Obligations of Peabody. The obligations of Peabody under this Agreement are subject to the satisfaction at or prior to the Closing Date of the following conditions, unless otherwise waived by Peabody.

(a) Warranties and Agreements of Eastern; Officers' Certificate. All representations and warranties of Eastern contained in this Agreement shall be true and correct in all material respects at and as of the Closing Date with the same effect as though such representations and warranties were

* * * *

Schedule 5(c)

Welfare Plans

EACC Health Care Plan

EACC Retiree Health Care Plan

EGFA Long-Term Disability Plan

EGFA Group Life Insurance Plan

EACC AD&D Plan

EGFA Voluntary AD&D Plan

EGFA Travel Accident Insurance Plan

Benefit Plan for UMWA Represented Employees of EACC and Subs

EACC Salary Continuance (Short-Term Disability)

EGFA Employee Transfer and Relocation Program

EACC Mine Rescue Team Insurance

* * * *

BEST AVAILABLE COPY

ZAST, Samuel Eugene 235-10-5990 NO. A1540 (3-19-42)

Blood type - O-A

DATE HIRED	DATE STARTED WORK		DATE LAST WORKED	REASON FOR LEAVING
	1-2-1934	Glen White	3-11-59	OFF WITH PERMISSION - DEATH IN FAMILY
RI 3-23-59	3-23-59		9-21-60	CUT OFF - MINE CLOSED - 9-28-60

1-17-65 45 11.7

12-4 - 2"

EMPLOYMENT—DISCHARGE—PERSONAL HISTORY

COMPANY	LOCATION—PLANT	Date Employed—Hour	Clk. No.	Social Security Acct. No.
Koppers Coal Division	Helen, W. Va.	A. M. P. M.	543	235-10-5990

Last Name	First Name	Middle Name	Rate	Coal Miner's Cert. No.
(M) EAST	Samuel	Eugene		09040
Last Name (Father)	First Name	Middle Name		415-48 (3-13-42)
EAST	William			
Last Name (Mother's Maiden)	First Name	Middle Name		
ALBERT	Lula			
Employee's Address—No. and Street	City and P. O.	State		
	Lester,	W.Va.		

Nationality of Employee	Citizen		Date of Birth	Will be 65
American	Yes X	No	1-17-1905	1970

Male X / Female	Married X / Single	Wid'w'd / Divd.	Separated / Prot'tant X	Catholic / Jew	White X / Colored	Wt.	Ht.	Health	Child'n	Other Dep.	Place of Birth
						157	5'9	Ok	0		Dora, Alabama

From	To	Name and Address—Previous Employer—Last Pay. First	Occupation	Rate	Reason for Leaving
1929	1934	BeBardeleben Col Dora, Ala.	Loader		work bad
1926	1929	Pratt Fuel Co. Dora, Ala	"		" 2

CHANGE OF ADDRESS — CHANGE OF ADDRESS

Employed Glen White 1-2-34

Discharged — Resigned — Date of Severance — Hour A. M. P. M.

Name

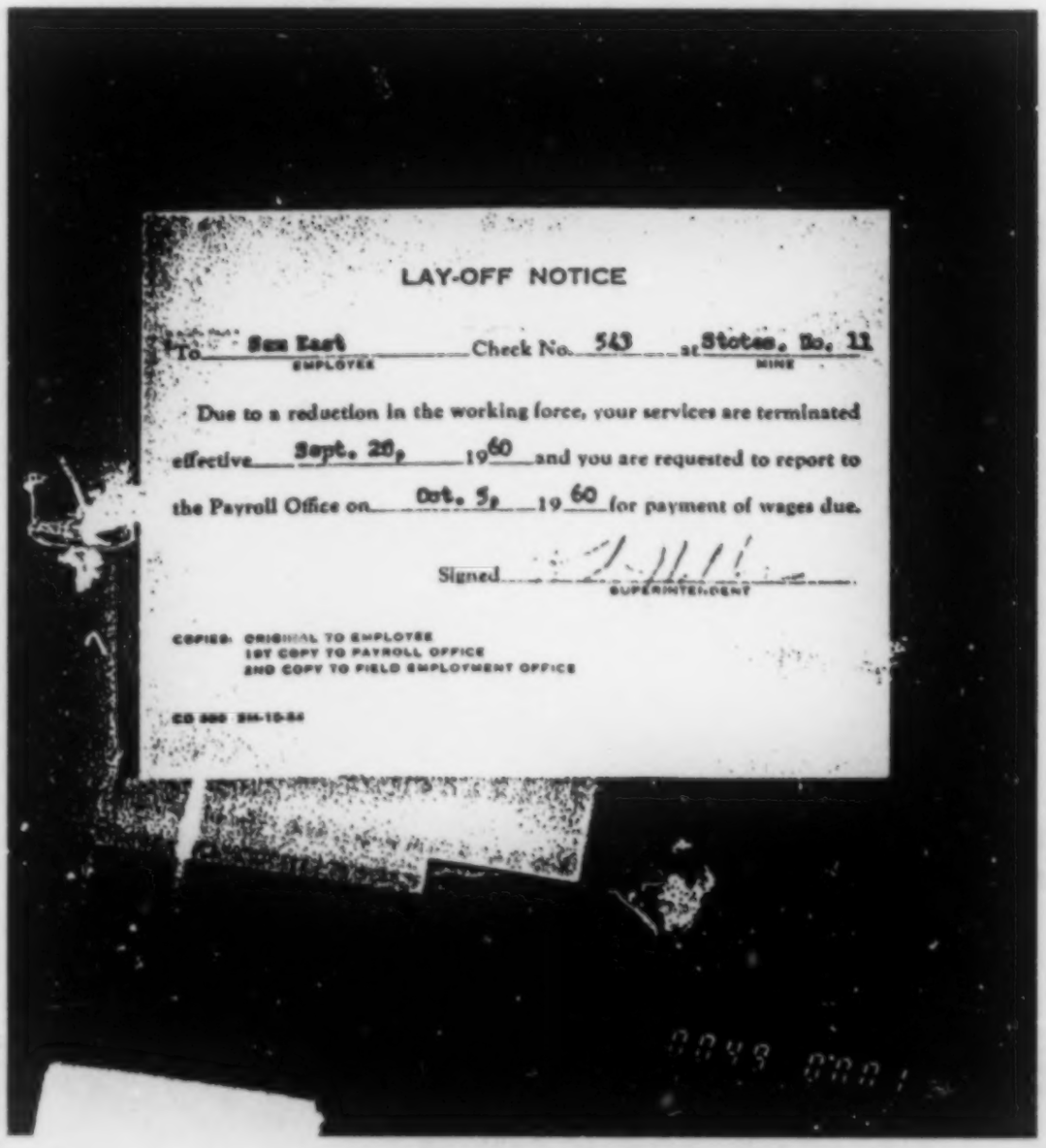
Dept. Head—Foreman

O.K.

For Employment
Samuel East
Signature or Mark of Employee
D. Earl Gray
Witness

O. K.
Plant Supt.

O. K.
Personnel Supervisor



LAY-OFF NOTICE

To Sam East (EMPLOYEE) Check No. 543 at Stotes. No. 11 (MINE)

Due to a reduction in the working force, your services are terminated effective Sept. 28, 1960 and you are requested to report to the Payroll Office on Oct. 5, 1960 for payment of wages due.

Signed _____ (SUPERINTENDENT)

COPIES: ORIGINAL TO EMPLOYEE
1ST COPY TO PAYROLL OFFICE
2ND COPY TO FIELD EMPLOYMENT OFFICE

CO 600 SM-10-54

8043 8001

CO-000 EM 11-59

EASTERN GAS AND FUEL ASSOCIATES
COAL DIVISION
FIELD SEPARATION NOTICE

Stotesbury (MINE OPERATION) #11 (MINE NUMBER)

NAME OF EMPLOYEE (AS SHOWN ON SOCIAL SECURITY CARD): CHECK NUMBER 543

East (LAST) Sam (FIRST) (MIDDLE)

ADDRESS Lester, W. Va. PHONE

OCCUPATION Cutting Mach. Opr. (35-B Jeffrey) SOCIAL SECURITY NUMBER 235-10-5940

CLASSIFICATION: EXCEPT SHIFT ☐ SALARIED ☐ CONTRACT ☒

DATE OF BIRTH 1 (MONTH) 17 (DAY) 1905 (YEAR) YEAR OF CONTINUOUS SERVICE 15 Yrs W ☐ C ☒

FIRST DAY WORKED 6-1-1945 LAST DAY WORKED 9-23-60

SEPARATION PAY. FROM ____ TO ____ AMOUNT $ ____

WAGES IN LIEU OF NOTICE. FROM ____ TO ____ AMOUNT $ ____

REASON FOR SEPARATION

VOLUNTARY QUIT	DISCHARGED FOR CAUSE	DATE*
☐ TO RETURN TO SCHOOL	☐ ABSENTEEISM	
☐ FAMILY TROUBLE	☐ INFERIOR WORK	
☐ TRANSPORTATION	☐ MISCONDUCT	
☐ MOVING FROM LOCALITY	☐ INFRACTION MINE LAWS OR RULES	
☐ BETTER JOB—WHERE?	☐ SAFETY RULE VIOLATION	
☐ HEALTH	☐ REFUSED TRANSFER	
☐ TO FARM	☐ REFUSED TO OBEY ORDERS	
☐ GAVE NOTICE OF ____ DAYS	☐ ____	
☐ OTHER (EXPLAIN)	____ NUMBER OF DAYS	

SOURCE OF INFORMATION ____

OTHER	DATE*
☐ DEATH	
☐ RETIRED	
VOLUNTARY ☐ COMPULSORY ☐	
☒ LAID OFF—LACK OF WORK	
☐ MILITARY SERVICE	

FOREMAN'S REPORT ON JOB PERFORMANCE

	SATISFACTORY	UNSATISFACTORY
SAFETY MINDED	☑	☐
SKILL ON JOB	☑	☐
ATTENDANCE RECORD	☑	☐
ACCEPTANCE OF ORDERS	☑	☐
COOPERATION	☑	☐

WOULD YOU REHIRE YES ☐ NO ☑

SIGNED ____ (IMMEDIATE FOREMAN) SIGNED A T Bugar (GENERAL FOREMAN)

OTHER COMMENTS Because age

SIGNED—MINE ACCOUNTANT D A Morris APPROVED SUPT F. J. Wolf

*FILL IN DATE IF DIFFERENT FROM "LAST DAY WORKED"

COPY TO INDUSTRIAL RELATIONS DEPARTMENT AT MT. HOPE, W. VA.

0049 0013

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

(Caption Omitted)

AFFIDAVIT OF KYU LEE

I do hereby depose and say as follows:

1. I am the Assistant Director of Eligibility Services of the United Mine Workers of America Health and Retirement Funds (the "Funds"). The Funds currently consist of several multiemployer benefit plans, including two multiemployer welfare plans and two multiemployer pension plans, namely, the United Mine Workers of America Combined Benefit Fund (the "Combined Fund"), the United Mine Workers of America 1992 Benefit Plan *the "1992 Benefit Plan"), the United Mine Workers of America 1950 Pension Plan, and the United Mine Workers of America 1974 Pension Plan. Prior to the creation of the Combined Fund on February 1, 1993, the Funds consisted of the two pension plans identified above as well as two private multiemployer welfare plans known as the United Mine Workers of America 1950 Benefit Plan and Trust (the "1950 Benefit Plan") and the United Mine Workers of America 1974 Benefit Plan and Trust (the "1974 Benefit Plan"). The 1950 Benefit Plan and 1974 Benefit Plan were the successors to the United Mine Workers of America Welfare and Retirement Fund of 1950 (the "1950 W&R Fund"), which was created by the National Bituminous Coal Wage Agreement of 1950. The 1950 W&R Fund was the successor of the United Mine Workers of America Welfare and Retirement Fund of 1947 (the 1947 W&R Fund"), which was itself the successor of the United Mine workers of America Welfare and Retirement Fund (the "1946 W&R Fund") that was created by a 1946 agreement between the United Mine Workers of America ("UMWA") and the United States.

2. As Assistant Director of Eligibility Services of the Funds, I am responsible for making final eligibility determinations for benefits provided by the Funds.

3. I make this affidavit based on my review of the business records of the Funds, which consist of records made at or near the time by, or from information transmitted by, a person with knowledge and which are kept by the Funds in the course of regularly conducted business activities.

4. I have reviewed the Funds' records regarding the Samuel E. East, a deceased beneficiary of the United Mine workers of America 1950 Benefit Plan.

5. The records of the Funds indicate that Mr. East was employed by Plaintiff Eastern Enterprises (formerly known as Eastern Gas and Fuel Associates) ("Eastern") from January 2, 1934 to September 28, 1960.

6. Subsequently, Mr. East worked for the CC & L Coal Company from July 20, 1962 to March 15, 1963. On or about March 15, 1963 CC & L Coal Company changed its name to Calvert Coal Company. Although the company changed its name, Mr. East continued to work for the company until January 9, 1967. A review of the Funds' records indicates that the CC & L Coal Company/Calvert Coal Company was a NBCWA signatory employer during the period may 1, 1959 through December 5, 1977, at which time it went out of business.

7. Shortly after leaving employment with the Culvert Coal Company, Mr. East retired and applied for benefits from the 1950 W&R Fund.

8. Mr. East was a beneficiary of the 1946 W&R Fund, the 1947 W&R Fund and 1950 W&R Fund from those plans' inception, and received health benefits from them while he was working for Eastern, the CC & L Coal Company and the Calvert Coal Company. After his retirement in 1967, he

continued to be a beneficiary of the 1950 W&R Fund's successor, the 1950 Benefit Plan.

9. Mr. East's spouse was a beneficiary of the 1950 Benefit Plan on July 20, 1992 and thereafter became a beneficiary of the Combined Fund.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Date: 4/12/95 /s/Kyu Lee

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

(Caption Omitted)[1]

FEDERAL DEFENDANT'S RESPONSE TO EASTERN ENTERPRISES' STATEMENT OF MATERIAL FACTS AS TO WHICH THERE IS NO DISPUTE

Federal Defendant Shirley S. Chater, Commissioner of Social Security hereby joins Defendant UMWA Combined Fund and Its Trustees' Response to Plaintiffs' Statement of Material Facts as to Which There Is No Dispute served on April 14, 1995.

DATED: April 14, 1995

Respectfully submitted,

Frank W. Hunger
Assistant Attorney General

Donald K. Stern
United States Attorney

Suzzane Durell
Assistant U. S. Attorney

---

[1] [Footnote was in caption.] Pursuant to the Social Security Independence and Program Improvements Act of 1994, Pub. L. No. 103-296, the function of the Secretary of Health and Human Services in Social Security and related cases was transferred to the Commissioner of Social Security effective March 31, 1995. In accordance with Fed. R. Civ. P. 25(d) and §106(d) of Pub. L. No. 103-296, Shirley S. Chater, Commissioner of Social Security, should be substituted for Donna E. Shalala, Secretary of Health and Human Services.

/s/ Brian G. Kennedy

/s/ Gretchen E. Jacobs
Trial Attorney

Federal Programs Branch
Civil Division
Department of Justice
Room 922
901 E. Street, N.W.
Washington, D.C. 20530
(202) 514-3489
Fax: (202) 616-8202

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and Supplemental Assistance
Litigation Branch,
Office of General Counsel,
Social Security administration

Attorneys for Defendant
Commissioner Chater

SSA-1826
VERSION 1984.002

ITEMIZED STATEMENT OF EARNINGS
* * * FOR SSN 235-10-5990 * * *

* * * *

FROM: SOCIAL SECURITY ADMINISTRATION
OFFICE OF CENTRAL RECORDS OPERATIONS
BALTIMORE, MARYLAND 21235-0000

NUMBER HOLDER NAME:
SAMUEL E EAST

PERIODS REQUESTED JANUARY 1946 TO DATE

YEAR	JAN-MARCH	APRIL-JUNE	JULY-SEPT	OCT-DEC	TOTAL

EMPLOYER NUMBER: 04-1270730
EASTERN ENTERPRISES
9 RIVERSIDE RD
WESTON, MA 02193

1946	795.34	602.31	1,017.16	585.19	$ 3,000.00
1947	1,027.17	925.64	879.79	167.40	$ 3,000.00
1948	955.42	971.67	1,072.91		$ 3,000.00
1949	778.75	1,012.15	484.53	437.02	$ 2,712.45
1950	536.23	1,045.31	815.89	602.57	$ 3,000.00
1951	1,019.16	1,157.81	986.15	436.88	$ 3,600.00
1952	1,128.98	1,218.38	892.84	359.80	$ 3,600.00
1953	851.47	1,190.04	1,050.99	507.50	$ 3,600.00

SSA-1826
VERSION 1984.002

ITEMIZED STATEMENT OF EARNINGS
* * * FOR SSN 235-10-5990 * * *

YEAR	JAN-MARCH	APRIL-JUNE	JULY-SEPT	OCT-DEC	TOTAL
1954	832.86	986.79	890.52	889.83	$ 3,600.00
1955	1,229.46	1,269.97	1,377.82	322.75	$ 4,200.00
1956	1,469.05	1,763.59	967.36		$ 4,200.00
1957	1,450.89	1,580.48	1,168.63		$ 4,200.00
1958	1,072.35	1,326.24	1,096.66	704.75	$ 4,200.00
1959	851.02	1,543.19	1,007.37	1,239.84	$ 4,641.39
1960	1,445.87	1,711.16	1,396.40		$ 4,553.43

EMPLOYER NUMBER: 55-0437957
C C & L COAL CO.
110 HARVEY ST
BECKLEY, WV 25801

1962			885.86	885.42	$ 1,771.28
1963	486.05				$ 486.05

EMPLOYER NUMBER: 55-0463310
CALVERT COAL COMPANY
110 HARVEY ST
BECKLEY, WV 25801

1963	210.00	972.54	1,033.16	955.05	$ 3,170.75
1964	1,339.75	1,508.37	1,488.37	465.51	$ 4,802.00
1965	1,655.00	1,730.00	1,415.00		$ 4,800.00

SSA-1826
VERSION 1984.002

ITEMIZED STATEMENT OF EARNINGS
* * * FOR SSN 235-10-5990 * * *

YEAR	JAN-MARCH	APRIL-JUNE	JULY-SEPT	OCT-DEC	TOTAL
1966	1,484.17	1,354.75	1,624.66	1,681.50	$ 6,145.08
1967	137.75				$ 137.75

THERE ARE NO OTHER EARNINGS RECORDED UNDER THIS SOCIAL SECURITY NUMBER FOR THE PERIOD REQUESTED.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

(Caption Omitted)

ANSWER TO THIRD PARTY COMPLAINT

1. Paragraph 1 states only legal conclusions to which no response is required. To the extent that Paragraph 1 contains any factual allegations, the same are denied.

2. Paragraph 2 states only legal conclusions to which no response is required. To the extent that Paragraph 2 contains any factual allegations, the same are denied.

3. On information and belief, Third Party Defendants admit the allegations of Paragraph 3 of the third party complaint.

4. Third Party Defendants admit the allegations of Paragraph 4 of the Complaint.

5. Third Party Defendants admit the allegations of the first and third sentences of Paragraph 5 of the Complaint. The remaining allegations are denied.

6. Third Party Defendants admit the allegations of Paragraph 6 of the Complaint.

7. Third Party Defendants admit the allegations of Paragraph 7 of the Complaint.

8. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 8 of the Complaint.

9. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 9 of the Complaint.

10. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegation that

Eastern completed the transfer of its coal-related assets to EACC by January 1, 1966. The remaining allegations of Paragraph 10 are denied.

11. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 11 of the Complaint.

12. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 12 of the Complaint. Additionally, the allegations made in this paragraph are the subject of written agreements and other documents which documents speak for themselves and require no answer as to their contents.

13. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 13 of the Complaint. Additionally, the allegations made in this paragraph are the subject of written agreements and other documents which documents speak for themselves and require no answer as to their contents.

14. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 14 of the Complaint. Additionally, the allegations made in this paragraph are the subject of written agreements and other documents which documents speak for themselves and require no answer as to their contents.

15. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 15 of the Complaint. Additionally, the allegations made in this paragraph are the subject of written agreements and other documents which documents speak for themselves and require no answer as to their contents.

16. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 16 of the Complaint. Additionally, the allegations made in this paragraph are the subject of written agreements and

other documents which documents speak for themselves and require no answer as to their contents.

17. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 17 of the Complaint. Additionally, the allegations made in this paragraph are the subject of written agreements and other documents which documents speak for themselves and require no answer as to their contents.

18. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 18 of the Complaint. Additionally, the allegations made in this paragraph are the subject of written agreements and other documents which documents speak for themselves and require no answer as to their contents.

19. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 19 of the Complaint. Additionally, the allegations made in this paragraph are the subject of written agreements and other documents which documents speak for themselves and require no answer as to their contents.

20. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 20 of the Complaint. Additionally, the allegations made in this paragraph are the subject of written agreements and other documents which documents speak for themselves and require no answer as to their contents.

21. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 21 of the Complaint.

22. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 22 of the Complaint.

23. Third Party Defendants admit that Peabody and EACC were signatories to certain collective bargaining agreements

through the Bituminous Coal Operators Association ("BCOA"). The remaining allegations of paragraph 23 of the Complaint are denied.

24. Third Party Defendants admit that on or about March 31, 1987, Peabody Holding Co., Inc. ("Peabody") entered into a stock exchange agreement with Eastern pursuant to which it acquired CPC and indirectly, CPC's subsidiary (EACC). The remaining allegations of Paragraph 24 are denied.

25. Third Party Defendants deny the allegations of paragraph 25 of the Complaint.

26. Third Party Defendants deny the allegations of paragraph 26 of the Complaint. Additionally, the allegations made in this paragraph are the subject of written agreements and other documents which documents speak for themselves and require no answer as to their contents.

27. Third Party Defendants deny the allegations of paragraph 27 of the Complaint. Additionally, the allegations made in this paragraph are the subject of written agreements and other documents which documents speak for themselves and require no answer as to their contents.

28. The allegations of paragraph 28 are the subject of written agreements and other documents which documents speak for themselves and require no answer as to their contents. Any other allegations are denied.

29. The allegations of paragraph 29 are the subject of written agreements and other documents which documents speak for themselves and require no answer as to their contents. Any other allegations are denied.

30. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 30 of the Complaint.

31. Paragraph 31 states a legal conclusion to which no response is required. To the extent that the paragraph contains factual allegations, the same are denied.

32. Paragraph 32 states a legal conclusion to which no response is required. To the extent that the paragraph contains factual allegations, the same are denied.

33. Paragraph 33 states a legal conclusion to which no response is required. To the extent that the paragraph contains factual allegations, the same are denied.

34. Paragraph 34 states a legal conclusion to which no response is required. To the extent that the paragraph contains factual allegations, the same are denied.

35. Paragraph 35 states a legal conclusion to which no response is required. To the extent that the paragraph contains factual allegations, the same are denied.

36. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 36 of the Complaint.

37. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 37 of the Complaint.

38. Third Party Defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 38 of the Complaint.

39. Paragraph 39 states a legal conclusion to which no response is required. To the extent that the paragraph contains factual allegations, the same are denied.

40. Paragraph 40 states a legal conclusion to which no response is required. To the extent that the paragraph contains factual allegations, the same are denied.

41. Third party defendants lack information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 41 of the Complaint.

42. Paragraph 42 states a legal conclusion to which no response is required. To the extent that the paragraph contains factual allegations, the same are denied.

43. Third Party Defendants deny the allegations of Paragraph 43 of the Complaint.

44. Third Party Defendants deny the allegations of Paragraph 44 of the Complaint.

45. Third Party Defendants deny the allegations of Paragraph 45 of the Complaint.

46. Third Party Defendants deny the allegations of Paragraph 46 of the Complaint.

47. Third Party Defendants repeat and incorporate by reference their answers to Paragraphs 1 through 46 of the Complaint.

48. Third Party Defendants deny the allegations of Paragraph 48 of the Complaint.

49. Third Party Defendants deny the allegations of Paragraph 49 of the Complaint.

50. Third Party Defendants deny the allegations of Paragraph 50 of the Complaint.

51. Third Party Defendants deny the allegations of Paragraph 50 of the Complaint.

FIRST AFFIRMATIVE DEFENSE

This court lacks personal jurisdiction over some or all of the Third Party Defendants.

SECOND AFFIRMATIVE DEFENSE

The Third Party Complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

Eastern Enterprises is estopped from relying on the acts, omissions, statements and conduct of Eastern Associated Coal Corporation made during the time period that EACC was owned and controlled by Eastern Enterprises, as a basis for establishing liability in this action.

FOURTH AFFIRMATIVE DEFENSE

The claims asserted by Eastern Enterprises are not a proper basis for a Third Party Complaint, given the limited nature of both the Complaint and the Counterclaim.

FIFTH AFFIRMATIVE DEFENSE

Eastern is solely liable under the Coal Act for the miners and beneficiaries assigned to it, since the miners in question worked only for Eastern and never worked for the Third Party Defendants.

SIXTH AFFIRMATIVE DEFENSE

Third Party Defendants never assumed any of the following types of liability of Eastern: Coal Act liability; liability under laws not enacted at the time Eastern transferred certain assets to EACC; unforeseeable liabilities; liabilities not in existence at the time of the asset transfer; and statutorily created liabilities.

SEVENTH AFFIRMATIVE DEFENSE

The Third Party Defendants never assumed any liabilities of Eastern which would obligate them to be responsible for Eastern's obligations under the Coal Act of 1992.

EIGHTH AFFIRMATIVE DEFENSE

The claims of Eastern against the Third Party Defendants are barred by the applicable statute of frauds.

NINTH AFFIRMATIVE DEFENSE

Third Party Defendants are not successors to Eastern, and Eastern lacks standing to claim that Third Party Defendants are its successors.

THIRD-PARTY
DEFENDANTS
By their attorneys,

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DATED: 3/18/96

(Certificate of Service Omitted)